United States Court of Appeals

FOR THE SECOND CIRCUIT

JOSEPH V. MANNING, AS PRESIDENT OF THE AMERICAN AIRLINES CHAPTER, FLIGHT ENGINEERS' INTERNATIONAL ASS'N, *et al.*, *Plaintiffs-Appellees*,

v.

AMERICAN AIRLINES, INC., *Defendant-Appellant.*

S. D. N. Y.
63 Civ. 1187
Docket No.
28461

CHARLES H. RUBY, AS PRESIDENT, etc., *Plaintiffs*,

v.

AMERICAN AIRLINES, INC., *Defendant-Appellant*,

and

NICHOLAS J. O'CONNELL, *et al.*, *Additional Defendants-Appellants*,

and

JOSEPH V. MANNING, AS PRESIDENT, etc., *Intervenors-Appellees.*

S. D. N. Y.
63 Civ. 585
Docket No.
28473

APPENDIX TO BRIEF FOR AMERICAN AIRLINES, INC., DEFENDANT-APPELLANT.

PART ONE.

ARTHUR M. WISEHART,
Attorney for Appellant,
633 Third Avenue,
New York 17, New York.

TN 7-1234

GEORGE A. SPATER,
H. WAYNE WILE,
Of Counsel.

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Explanation of the Arrangement of the Appendix.

This Court's order of September 18, 1963, consolidated for argument the appeals from injunctive orders in two separate cases. Docket No. 28473 (63 Civ. 585 below) is referred to herein as the "bargaining appeal", and Docket No. 28461 (63 Civ. 1187 below) is referred to as the "dues check-off appeal".

The appendix is in two parts; each is bound separately. This is Part One, which contains primarily items from the record in the dues check-off appeal. Also in this Part are the District Court's order in the bargaining appeal, O'Connell and Whitacre affidavits (with certain exhibits), portions of negotiating notes and excerpts from the transcripts of the same appeal.

Part Two of the appendix is devoted to items from the record in the bargaining appeal, with two exceptions: (i) American's Petition for Leave to Intervene in the NMB Proceeding with covering letter (60b-69b) is Defendant's Exhibit M in the dues check-off appeal and (ii) the crew complement agreement (75b-85b) is Defendant's Exhibit F in the dues check-off appeal (as well as being part of the record in the bargaining appeal).

The pagination in Part One uses the suffix "a" and, in Part Two, the suffix "b".

Statements Under Rule 15(b).

I. The Bargaining Appeal

This action, insofar as it involves the FEIA, was commenced on March 12, 1963, when the FEIA served an intervening complaint in the action commenced against appellant on March 1, 1963 by the Air Line Pilots Association, International. FEIA was granted leave to intervene on March 21 and, by order to show cause filed on March 25, 1963, the FEIA's motion for a preliminary injunction was brought on to be heard in conjunction with the evidentiary hearing on the Air Line Pilots Association's

motion for preliminary injunction. The hearings commenced on March 29.

By amended complaint, served on April 4, 1963, the FEIA added the additional appellants to this action. On April 5, Judge Wyatt temporarily restrained the additional appellants from signing an agreement with appellant or interfering with the flight engineers in their choice of bargaining representatives; the restraining order was extended to appellant on April 17. The order expired April 25, 1963.

The hearings continued until May 3, 1963. Judge Wyatt took all motions under advisement on May 27 following the submission of briefs by all parties.

On July 11 appellant filed a suggestion of mootness. Judge Wyatt heard counsel on August 6 and reserved decision.

In an opinion dated August 12, Judge Wyatt ruled against the suggestion of mootness, granted the motions for preliminary injunctions, and severed them from the part of the case involving the Air Line Pilots Association. The orders were signed on August 19.

Appellant filed its notice of appeal on September 18, and it was ordered that this appeal be consolidated with the dues check-off appeal for argument.

II. The Dues Check-Off Appeal.

This suit was commenced on April 25, 1963 by the service and filing of a verified complaint. The FEIA's motion for a preliminary injunction against appellant was brought on for hearing in motion part on April 30 before Judge Feinberg. However, because the parties were currently engaged in a hearing in another action, 63 Civ. 585, Judge Feinberg adjourned the hearing until May 7. On May 7, Judge Bryan heard arguments by counsel and concluded that the motion should be referred to Judge Wyatt.

Hearings commenced on May 10 and were concluded on May 17. On June 25, by order of Judge Ryan, this action

and the bargaining case were transferred to Judge Wyatt for all purposes, pursuant to District Court Rule 2(b).

In an opinion dated September 9, 1963, Judge Wyatt granted appellees' motion for a preliminary injunction and, pursuant to such opinion, an order was signed on September 16.

American filed its Notice of Appeal on September 16 and on the same date filed a motion (i) to stay the preliminary injunction pending determination of the appeal and (ii) for a preference on the appeal. The motion was heard on September 18. Argument was set for the week of October 21, 1963, the appeal was consolidated for argument with the bargaining appeal, and that part of the District Court's order requiring dues to be deducted retroactively was stayed.

Order of the District Court in Docket No. 28473 (Bargaining Appeal).*

Intervenors' motion for a preliminary injunction in their favor and against the defendant having come on for hearing, and the Court having considered the pleadings, the affidavits submitted in support of said motion and in opposition thereto, the evidence introduced in open court, and the memoranda of law submitted by the parties, and the Court having separately made and filed findings of fact and conclusions of law, it is

ORDERED that defendant, American Airlines, Inc., its officers, agents and employees, be and hereby are enjoined and restrained until final hearing and judgment:

1. From engaging in negotiations and collective bargaining concerning rules, rates of pay and work-

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* Second Supplemental Record, pp. 452-455.

ing conditions of the employees of defendant American Airlines, Inc., or any of them, employed in the craft or class of Flight Engineers, with any person, organization or group, other than the American Airlines Chapter, Flight Engineers' International Association, AFL-CIO.

2. From making, publishing or implementing, or in any manner causing to be made, published or implemented any agreement covering the rules, rates of pay or working conditions of the employees of defendant American Airlines, Inc., or any of them, employed in the craft or class of Flight Engineers, except such agreement or changes therein as may result from collective bargaining between defendant American Airlines, Inc. and the American Airlines Chapter, Flight Engineers' International Association, AFL-CIO.

3. From, directly or indirectly, in any way, manner or form, or by any means whatsoever, interfering with, influencing or coercing any of its flight engineer employees with respect to their free and untrammeled right of selecting or designating their representative or representatives for the purpose of making and maintaining agreements with American Airlines, Inc., relating to rules, rates of pay and working conditions, as well as for any and all other purposes of the Railway Labor Act (45 U. S. C. A. §151 and following):

and it is further

ORDERED that defendant American Airlines, Inc., by and through its duly authorized officers, agents, and employees, shall treat with American Airlines Chapter, Flight Engineers' International Association, AFL-CIO, and exert every reasonable effort to make and maintain agreements

concerning rates of pay, rules and working conditions respecting the craft or class of flight engineers; and it is further

ORDERED that under Fed. R. Civ. P. 65(c) intervenors are to give security in the form of a bond, with corporate surety, to be approved by the Court in the sum of one thousand dollars ($1000) conditioned for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

Nothing in this order is intended to limit any rights which any party may have under the Railway Labor Act (45 U. S. C. A. §151-188).

Dated: New York, New York
August 19, 1963

INZER B. WYATT
United States District Judge

NOTE: The opinion upon which the foregoing order was issued appears on page 1b through 57b of Part Two of this Appendix.

Order of the District Court in Docket No. 28461 (Dues Check-Off Appeal).

(469) WYATT, District Judge.

Plaintiffs' motion for a preliminary injunction in their favor and against the defendant having come on for hearing, and the Court having considered the pleadings, the affidavits submitted in support of said motion and in opposition thereto, the evidence introduced in open court, and the memoranda of law submitted by the parties, and the Court having separately made and filed findings of fact and conclusions of law, it is

Order of the District Court in Docket No. 28461 (Dues Check-Off Appeal)..

ORDERED that until (a) the final hearing and judgment herein or (b) the controversy has been finally acted upon as required by Section 5 of the Railway Labor Act (45 U. S. C. §155), by National Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board, whichever first occurs, defendant, American Airlines, Inc., its officers, agents and employees, be and hereby are enjoined and restrained from discontinuing the deduction of dues and the remittance thereof to the American Airlines (470) Chapter, Flight Engineers' International Association, AFL-CIO, in accordance with the practice established and followed under the dues check-off agreement entered into by American Airlines, Inc., and said Chapter, which agreement expired April 30, 1963; and it is further

ORDERED that defendant American Airlines, Inc., shall deduct and remit to the American Airlines Chapter, Flight Engineers' International Association, AFL-CIO, dues payments in the amount which was to be deducted and remitted between May 1, 1963, and the date of this Order; and it is further

ORDERED that until (a) the final hearing and judgment herein or (b) the controversy has been finally acted upon as required by Section 5 of the Railway Labor Act (45 U. S. C. §155), by National Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board, whichever first occurs, defendant American Airlines, Inc. shall continue the deduction and remittance of dues in accordance with said dues check-off agreement; and it is further

ORDERED that defendant American Airlines, Inc., by and through its duly authorized officers, agents, and employees, shall treat with the American Airlines Chapter, Flight

Opinion of the District Court in Docket No. 28461 (Dues Check-Off Appeal):

Engineers' International Association, AFL-CIO, and exert every reasonable effort to settle any controversy or dispute with said Chapter concerning the check-off of dues and whether there should, or should not, be an agreement therefor between the parties; and it is further

(471) ORDERED that under Fed. R. Civ. P. 65(c) plaintiffs are to give security in the form of a bond, with corporate surety, to be approved by the Court in the sum of two hundred and fifty dollars ($250) conditioned for the payment of such costs and damages as may be incurred or suffered by any party found to have been wrongfully enjoined or restrained.

Dated: New York, New York
September 16, 1963

INZER B. WYATT
United States District Judge

Opinion of the District Court in Docket No. 28461 (Dues Check-Off Appeal).

(315) WYATT, District Judge,

This motion by plaintiffs for a preliminary injunction raises questions under the Railway Labor Act (316), 45 U. S. C. §151 and following; (the "Act"), made applicable to air carriers by amendments effective April 10, 1936 (45 U. S. C. §181). The facts are perfectly clear and beyond dispute; the questions are only of law.

The action is for an injunction and a declaratory judgment. Plaintiffs are President Manning of American Airlines Chapter, Flight Engineers' International Association, AFL-CIO (the "Chapter") and the Chapter itself. Defendant (often called "American" or "the Company" herein) is a very large and important common carrier by air.

The Chapter has been for a number of years, and is now, the collective bargaining representative of the employees of American in the "craft or class" of flight engineers. In opposing the present motion, American contended that the status of the Chapter as representative was in doubt. This contention was also made in another action in this Court, but an opinion and decision in such other action (*Ruby, etc.* v. *American Airlines, Inc., et al.*, 63 Civ. 585), filed August 12, 1963, rejected the contention and for present purposes it is no longer available to defendant.

An agreement, usually called the "basic agreement", was made between American and its flight engineers, represented by the Chapter, effective May 1, 1958. The duration provision (317) of this basic agreement was in relevant part as follows:

> "This Agreement shall become effective May 1, 1958 and shall continue in full force and effect until April 30, 1963 and shall renew itself without change until each successive April 30 thereafter unless written notice of intended change is served in accordance with Section 6, Title I, of the Railway Labor Act, as amended, by either party hereto at least sixty (60) days prior to April 30 in any year after April 30, 1962; . . ."

There was a separate agreement between the parties, usually called the "dues check-off agreement", also effective May 1, 1958. This agreement provided for deduction of dues and payment thereof to the Chapter, as permitted by Section 2, Eleventh, (b), of the Act (45 U. S. C. §152, Eleventh, (b)). The duration provision of the dues check-off agreement was as follows:

> "G. This Agreement shall become effective May 1, 1958 and shall continue in full force and effect until April 30, 1963, and shall be subject to renewal there-

after only by mutual agreement of the parties hereto."

There was another separate agreement between the parties under which a system "board of adjustment" was established as required by the Act (45 U. S. C. §184). The duration provision of this adjustment board agreement was word for word the same as the part quoted above from the duration provision of the basic agreement.

It will be noted that the dues check-off agreement, unlike the two others, was not to "renew itself" but was to (318) be in effect only "until April 30, 1963" and was "subject to renewal thereafter only by mutual agreement of the parties hereto".

Under date of February 28, 1963, notices of intended changes in the *basic* agreement were given by the Chapter and by American under Section 6 of the Act (45 U. S. C. §156).

Under date of March 8, 1963, the Chapter gave a similar notice (often called a "Section 6 opener") to the Company with respect to the *dues check-off* agreement. The change proposed was in paragraph G, to make the duration of the dues check-off agreement the same as that of the basic agreement.

The Company took the position that this Section 6 opener as to the dues check-off agreement was not timely served and moreover that the restrictions in Section 6 against altering "rates of pay, rules, or working conditions" had no application to dues check-off because of the expiry date of the agreement.

The Company therefore took the further position that it would discontinue dues check-off after the expiry of the agreement on April 30, 1963, and presumably it has done so.

This action was then commenced.

The motion asks that the Company be enjoined preliminarily from discontinuing the dues check-off.

nion of the District Court in Docket No. 28461 (Dues Check-Off Appeal).

The theory of the action, and of the motion, is (319) that the March 8, 1963 notice or "opener" under Section 6 made applicable the procedures provided by the Act for the settlement of a dispute by collective bargaining, that until these procedures have been followed to exhaustion there is a statutory duty on the parties to maintain the status quo, and that discontinuance of the dues check-off by American is an alteration of the status quo and thus a violation of the Act.

The purpose of the Act is broadly to avoid strikes or other interruptions of commerce by requiring collective bargaining, by encouraging arbitration and use of the services of the National Mediation Board ("NMB") and by forbidding during this process any alteration "by the carrier" of "rates of pay, rules, or working conditions".

A detailed description of the Act's procedures was made by Judge Bryan in *American Airlines, Inc.* v. *Air Line Pilots Assn.*, 169 F. Supp. 777, 783-785 (S. D. N. Y. 1958).

The provision of Section 6 requiring maintenance of the status quo by the carrier is in relevant part as follows (45 U. S. C. §156):

> "In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon, as required by section 155 of this title, by the Mediation Board, unless a period of (320) ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board."

Normally the grant of a preliminary injunction, an extraordinary remedy as it is generally called, must be

based on a "clear showing of probable success and possible irreparable injury to plaintiff" (*Societe Comptair, etc.* v. *Alexander's Dept. St.*, 299 F. 2d 33, 35; 2d Cir. 1962).

In this instance, there being no real dispute about the facts, very little (if any) more could be developed at the trial than is now before the Court. The arguments for the parties have been directed therefore primarily to the merits, as a matter of law, and the decision now to be made—although on a motion for a preliminary injunction—is of the ultimate merits of the action rather than (more narrowly) on the probability of success of plaintiffs.

The theory for plaintiffs, as outlined above, taken together with the quoted provision in Section 6 of the Act, makes out prima facie a case for relief.

1.

The principal points for defendant should therefore be examined now.

a.

Defendant says that an interpretation of an agreement is required; that this is for the adjustment board (321) under the agreement between the parties, the Act, and relevant decisions; and that failure of the Chapter to submit the matter to adjustment board procedures is fatal to this motion and to the action.

The "adjustment board" provided for by Section 204 of the Act (45 U. S. C. §124) is designed to settle disputes "growing out of grievances, or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions".

The agreement between these parties establishing an adjustment board was made in compliance with Section 204 and the board was given jurisdiction to decide disputes "which may arise under the terms of the Flight Engineers Agreement". The "Flight Engineers Agreement", from its definition and otherwise, seems clearly to be the basic

agreement; the dues check-off agreement is not included nor even referred to.

In any event, neither "grievances" nor the "interpretation or application" of any agreement are involved here. The duration provision of the dues check-off agreement needs no interpretation because it is clear on its face. It expired on April 30, 1963. Plaintiffs do not claim that the agreement has been extended, either by the Section 6 notice or otherwise. They admit that the agreement has expired by its terms.

(322) The *Larsen* case (313 F. 2d 599) cited for defendant involved a claim by an individual employee that he had been discharged in violation of a collective bargaining agreement; the rights there asserted by plaintiff were founded on the collective bargaining agreement. The *Larsen* decision is in no way applicable here, where the claim by the Chapter is not based on any violation of the agreement or on any "interpretation or application" of the agreement but rather on a claimed violation of the Act itself.

For substantially the same reason, *Intl. Assn. of Machinists* v. *Northwest Airlines*, 304 F. 2d 206 (8th Cir. 1962), cited by defendant, is clearly distinguishable. The Court there found that the issue was one of contract interpretation, that the dispute was therefore "minor", and that the adjustment board had exclusive jurisdiction. The Court explained (304 F. 2d at 209):

> "As pointed out in Elgin, Joliet & Eastern R. Co. *v.* Burley, 325 U. S. 711, 722-28, 65 S. Ct. 1282, 89 L. Ed. 1886, substantial differences in procedures exist in the handling of major and minor disputes. Major disputes are to be settled only by processes of non-compulsory adjustment through mediation and conciliation. Major disputes result when there is disagreement in the bargaining process for a new contract, while a minor dispute arises over the

interpretation of an existing collective bargaining agreement in a particular fact situation.

"We agree with the trial court that the dispute here presented is a minor dispute. The contract interpretation issue presented is whether the Boiler Operators (323) upon demand of their employers that they perform their duties are obligated under their existing contract to cross the picket line established by the Flight Engineers."

In the case at bar, to repeat, there is no question of contract interpretation. The contract has expired, the Chapter wishes to negotiate a new one and the dispute arises over whether there is to be a new contract or not. This is a "major" dispute in which the Court may properly grant an injunction on the requisite showing. *Virginian Railway Co.* v. *System Federation*, 300 U. S. 515 (1937).

b.

Defendant argues that an injunction to maintain the status quo is forbidden by the Norris-LaGuardia Act (29 U. S. C. §101 and following), specifically by Section 8 thereof (29 U. S. C. §108), because plaintiffs have not made "every reasonable effort" to settle the dispute by calling on NMB or by conferring with the representative of American's pilots.

So far as NMB is concerned, the time would not appear to be ripe or right for invoking its services. There have not been any conferences between the parties to settle the "dispute" over extension or renewal of the dues check-off agreement, this not due to any fault of the Chapter but because of the position taken by defendant itself.

The duty of the parties to confer and the propriety (324) *thereafter* of invoking the services of NMB is spelled out by Judge Bryan in *American Airlines, Inc.* v. *Air Line Pilots Assn.*, cited above, as follows (169 F. Supp. at 784; emphasis supplied):

Opinion of the District Court in Docket No. 28461 (Dues Check-Off Appeal).

> "If either carrier or employees desire to make any change in the status quo with respect to conditions of employment, either under an existing collective bargaining agreement or in its absence, they must give 'at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions'. §6.
>
> "Thereafter it is the duty of both parties under the mandate of Section 2 to confer and the Act directs that the time and place for the beginning of conference '*shall* be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice'. (Emphasis supplied.) §6.
>
> "*If the conferences fail* either party may invoke the services of the Mediation Board which 'shall promptly put itself in communication with the parties' and 'shall use its best efforts, by mediation, to bring them to agreement'."

In such a dispute as here exists, appeal to NMB is the *second* step not the first. This feature of the Act was discussed, for example, in a recent decision (*Railroad Yardmasters etc.* v. *St. Louis, etc. Ry. Co.*, 218 F. Supp. 193; N.D. Texas 1963) where the Court reviewed the controlling Supreme Court decisions and concluded (218 F. Supp. at 200-201; emphasis supplied):

> "They say that the Act seeks to induce agreement by requiring good faith negotiations as the *first* step in resolving each type of dispute. 45 U. S. C. A. Sec. 152. After that, the procedure is different for each class. Where the parties fail to accomplish a settlement of a (325) major dispute in the *initial* negotiations, they must exhaust administrative machinery for mediation, arbitration (if acceptable

to both), and adjustment of the controversy. 45 U. S. C. A. Secs. 152, 155-159."

So far as conferring with representatives of the pilots is concerned, there appears to be nothing whatever to indicate that this would be either reasonable, or at this time appropriate. The dispute is between the Company and the flight engineers solely and the issue is whether the dues check-off agreement between them shall be extended or renewed. With this issue, the pilots have no concern.

There is no showing that "every reasonable effort" has not been made by plaintiffs as contemplated by Section 8 of the Norris-LaGuardia Act (29 U. S. C. §108) and that Act does not prevent relief to plaintiffs to which they may be entitled under the Railway Labor Act.

c.

Defendant claims that a Section 6 opener under the dues check-off agreement was governed by the 60 day provision of the basic agreement and that service on March 8, 1963 (or on March 15, 1963 when defendant states the notice was received) was not timely. The short answer to this is that the two agreements were separate and distinct, the 60 day provision of the basic agreement neither by its terms nor otherwise was applicable, the dues check-off agreement contained no provision (326) as to service of Section 6 notices, and the wording of Section 6 itself was applicable, namely, that "at least thirty days' written notice" must be given. The notice served by the Chapter was therefore timely.

2.

It seems to come down to this, that without entering into any discussions with the union as to a new dues check-off agreement and with notice of the union's desire to have such discussions, the defendant on expiry of the agreement "altered" one of the "rules" or "working conditions",

namely, the dues check-off. This seems plainly in violation of Section 6 of the Act (45 U. S. C. §156), whether defendant believed it could properly do so or not.

So clear a violation of the Act requires relief to plaintiffs by way of injunction.

Defendant says that such an injunction would limit "the freedom of employees" and be contrary to Section 2 Eleventh (9) of the Act recognizing dues check-off agreements. The argument is not persuasive nor is it in any way supported by *Felter* v. *Southern Pacific Co.*, 359 U. S. 326 (1959) cited for it. The employees (who are not themselves complaining) can revoke the assignments already given by them, as provided therein and in the Act. To enjoin discontinuance of the dues (327) check-off cannot possibly affect such employees, whose complete freedom of revocation of assignments continues undisturbed.

Defendant further says that to require continuance of the dues check-off would in effect extend the old agreement, or make a new agreement for the parties—this because the old agreement definitely expired on April 30, 1963, and all obligations of defendant under it to check-off dues then expired also.

The analysis for defendant is not, however, the proper one. An injunction here is to enforce the duty of defendant under the *Act*, not under the old agreement or any agreement now being imposed by the Court.

Congress has forbidden a change by defendant of "rates of pay, rules, or working conditions" during the processes required by the Act. Congress believed that labor peace in the air carrier industry would be promoted by maintaining the status quo while efforts were being made to reach agreement. In this instance, if defendant were now free to use the self-help of stopping the dues check-off, the union would seem equally free to strike over the issue. Congress meant a negotiating, cooling and mediating period to intervene before such confrontations.

Opinion of the District Court in Docket No. 28461 (Dues Check-Off Appeal).

It is not required that defendant reach or make any agreement to continue the dues check-off. It is required that defendant bargain in good faith on the subject with the union, (328) and until the processes contemplated by the Act are concluded, the defendant must continue the check-off. If the processes under the Act are followed to completion and no agreement results, defendant will then be free to stop the check-off—but not before.

The Company argues that by limiting the check-off of dues to a fixed period expiring April 30, 1963, the parties agreed that no notices under Section 6 of the Act could be served so as to impose an obligation on the Company to continue dues check-off past April 30, 1963, as part of the maintenance of the status quo required by Section 6. This argument of the Company is in substance that the dues check-off agreement provided that the procedures of Section 6 of the Act would not apply.

The agreement itself contains no such provision specifically and nothing which specifically denies to either party the procedures of Section 6. True, the duration provision of the dues check-off agreement differs from the others, but this seems merely to mean that the dues check-off agreement would not "renew itself without change" but on the contrary any extension had to be the subject of negotiations and could only come about by "mutual agreement". There is nothing in this to indicate that the parties were agreeing that negotiations for an extension were to be in disregard of the provisions of (329) Section 6 of the Act. To find such an unusual and significant agreement express words would be necessary; it cannot be found by implication or from the omission of any reference to Section 6 notices.

But even if such were the undertaking of the parties, it could not be given effect because it would be invalid as against the public interest as declared by Congress in the Act. See *Felter* v. *Southern Pacific Co.*, 359 U. S. 326

(1959). A careful reading of *Flight Engineers Int'l Ass'n v. Am. Airlines, Inc.*, 303 F. 2d 5 (5th Cir. 1962) reveals nothing to the contrary.

In this connection, it must be remembered that Section 2 First of the Act (45 U. S. C. §152 First) imposes a solemn duty on the carrier and the union "to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions, and to settle all disputes . . . etc.". It is contrary to the whole scheme of the Act for either party to any expired agreement to take the position that upon such expiration all obligation disappears. There remain the obligations under the Act to follow its negotiating and other processes and to maintain the status quo until those processes are completed.

(330) That irreparable injury will be caused to plaintiffs by discontinuance of the dues check-off during negotiations seems sufficiently clear. Interruption in the established manner of collecting dues will certainly affect adversely the financial position of the union; mere change in the mechanics of collection will make difficult the receipt by the union of its income from dues. It is represented by affidavit that the union has extraordinary expenses in connection with litigation, including the lengthy proceedings in the other action (63 Civ. 585) pending in this Court and to which the union is a party. Defendant argues that damages will compensate the union, but such damages may require time for determination and collection; the need of the union is doubtless for income now. Moreover, if (as found) failure presently to check-off the dues and pay them over to the Chapter is in violation of the Act, such violation should not be permitted to weaken the Chapter in the present period. The balance of convenience as between the parties certainly favors plaintiffs. It is difficult to see what harm can be done to defendant by continuing, for the necessary period, the check-off of dues. The deductions are made under assignments from the

individual employees; it is (331) their money, not defendant's, which is involved.

The motion for a preliminary injunction is granted. The foregoing opinion sets forth the findings of fact and conclusions of law required by Fed. R. Civ. P. 52(a).

Settle order on notice. Suggestions are invited from counsel as to the amount of security to be required of plaintiffs under Fed. R. Civ. P. 65(c).

Dated: New York, New York
September 9, 1963

INZER B. WYATT
United States District Judge

Excerpts from Transcript in Docket No. 28461 (Dues Check-Off Appeal).

ADMISSION OF APPELLEES' COUNSEL ON LACK OF JURISDICTION TO DETERMINE CRAFT OR CLASS:

"The Court: I am confident of that, to determine craft or class is not a job for the Court.

Mr. Wisehart: That is certainly our position, your Honor. Perhaps Mr. Schwartz sees it differently.

Mr. Schwartz: No, sir, I do not see it differently." May 10 Tr., p. 14 (345).

STIPULATION THAT MARCH 15, 1963 AGREEMENT COVERS FLIGHT ENGINEERS:

"Mr. Wisehart: I call on counsel to stipulate that the settlement arrived at on or about March 15, 1963, if put in effect, would cover the flight engineers as well as pilots." May 10 Tr., p. 25 (357).

Excerpts from Transcript in Docket No. 28461, etc.

"Mr. Schwartz: I think that is true, that the language reflected in those agreements does cover the flight engineers." May 10 Tr., p. 26 (358).

STIPULATION THAT FEIA DID NOT SEEK REMEDIES BEFORE THE NMB OR THE ADJUSTMENT BOARD:

"Mr. Schwartz: I will stipulate that they [the flight engineers] have not requested the National Mediation Board to enter this dispute at this moment.

Mr. Wisehart: That is accepted. Will Mr. Schwartz simply state that they have not asked the adjustment board to enter this dispute at this moment?

Mr. Schwartz: That is right.

Mr. Wisehart: Will Mr. Schwartz further state that they have not submitted this to the grievance procedure, which precedes the adjustment board, of this dispute?

Mr. Schwartz: That is right." May 10 Tr., p. 32 (364).

ADMISSION THAT DUES CHECK-OFF AGREEMENT TERMINATED ON APRIL 30:

"Mr. Wisehart: That's right, and that is the next question. I do not understand Mr. Schwartz to seriously dispute what the agreement on its face calls for. Assuming that it does call for termination on April 30, . . .

The Court: It seems to me at this point reasonably plain that that is what the agreement calls for. I don't see that an agreement of that nature needs any interpretation. It is either there or it isn't there. Do you agree, Mr. Schwartz?

Mr. Schwartz: I do, your Honor. May 7 Tr., pp. 20, 21 (62, 63).

. . . . . .

"Mr. Schwartz: Yes. We have stated, and we have stated before Judge Bryan and your Honor, that there is

no question between us as to what the agreement means. Judge Bryan said it is clear, we said it is clear it terminated. The agreement was that there be an end, period * * *." May 17, Tr., p. 118 (452).

TESTIMONY OF FEIA PRESIDENT JOSEPH MANNING CONCERNING FAILURE TO CONFER:

"Q. What was the projected meetings that you say the wire [from Manning to O'Connell of the pilots] referred to, Mr. Manning? A. Well, the first notice that we have of such meetings was when Mr. O'Connell testified on March the 29th. If I recall correctly, Mr. Schwartz in his cross examination of Mr. O'Connell asked Mr. O'Connell after testifying to these meetings if he had invited the flight engineers to these meetings.

Mr. O'Connell answered that he had sent out invitations; that the invitations had gone out that morning, the morning of the 29th.

The following day, in Los Angeles, at my home, I received a wire from Mr. O'Connell that was time-stamped sent out of New York that evening, March 29th, and it invited us to these meetings to—invited the flight—I and the flight engineer committee to these meetings which were to be held on American Airlines system beginning, I believe, on April the 3rd through the 18th at all of these various bases, and the wire that I was referring to was my answer to him that I sent the next day to him, on Sunday. I believe that would be May 1st—April 1st.

Q. As I understood your testimony, the wire asked that the meetings be deferred, is that correct? A. Yes.

Q. And did it suggest meetings? A. It suggested a meeting between the flight engineer committee and the pilot committee to discuss the terms of this agreement that were supposedly arrived at on March 15th in so far as they affected the flight engineers.

Q. Did it set a date for such a meeting? A. No, sir.

Q. Did you— A. The wire suggested that the meeting— that such a meeting be held prior to any meeting being held on the American Airlines System.

Q. You are a neighbor of Captain O'Connell, isn't that true? A. Yes, sir, approximately a mile, a mile and a half away from him.

Q. And did you discuss this subject with Captain O'Connell? A. No, sir.

Q. Have you sought to have the meetings that you say you requested in this wire? A. As I said earlier, he never replied to it. He ignored the inquiry and never mentioned it again in any conversation.

Q. And you haven't asked him about it, is that correct? A. No, he proceeded with the meetings, so I assumed that our suggestion was not taken by him.

Q. Well, now, have you sought to meet with him after the meetings that were held over the System? A. No, sir.

Q. Have you sought to meet with anyone in the company concerning the March 15th settlement? A. No, sir." May 17 Tr.; pp. 45-48 (379-382).

* * * * * * *

"Q. Mr. Manning aside from the wire we discussed, have you sought to meet with the company or a pilot representative concerning the subject matter of the March 15th settlement apart from the wire that you referred to in your earlier testimony? A. Well, do I understand, sir, that that includes dues check-off?

Q. No. My question related to the subject matter of the March 15th settlement. A. Well, the answer to that question is no, we haven't." May 17 Tr., pp. 49-50 (383-84).

TESTIMONY OF FEIA PRESIDENT JOSEPH MANNING CONCERNING FAILURE TO MAKE ALTERNATE ARRANGEMENTS TO COLLECT DUES:

"Q. Mr. Manning, have you made alternate arrangements to collect these dues in the event the court should

decide not to grant the relief requested? A. No, sir." May 17 Tr., p. 50 (384).

Excerpts from Transcript in Docket No. 28473 (Bargaining Appeal)

TESTIMONY OF ALLIED PRESIDENT NICHOLAS J. O'CONNELL CONCERNING "REDDING OUT" PROCESS:

"Q. Mr. O'Connell, you are familiar with the process used by the Chairman of the National Mediation Board called the redding-out process, are you not? A. Yes, sir.

Q. Would you describe that process for the Court? A. The Chairman of the National Mediation Board placed a copy of what has been presented to you as the agreement between the company in the green folder you have, reproduced on regular-sized paper, and his practice is to, when the parties agree to any particular section or they agree to a revision of a particular section, he paints it with a red brush after having had the parties initial it, to demonstrate which portions of the agreement are now no longer in the area of contention or disagreement.

Q. Did the Chairman of the National Mediation Board use that process in connection with these resumed negotiations? A. Yes.

Q. Does he have possesion of the agreements thus reached by the parties in these negotiations? A. Yes.

Q. Was the so-called crew-complement document, which has been produced in evidence, redded out by the Chairman of the Mediation Board in the use of that process? A. I don't know, Mr. Wisehart, because the document was signed in the presence of Mediator O'Connell, and it was later verified by Mr. Edwards that it had been turned over to him. Whether he had redded it out or not, I can't physically say, because I didn't see him do it.

The Court: When you say that the document was signed, you mean initialed?

The Witness: Initialed, that is correct.

Q. But it was the understanding of the parties that when something was redded out, that was final, assuming agreements on other open items could be reached, is that right?

Mr. Schwartz: Objection.

The Court: Sustained.

Mr. Wisehart: I am trying to introduce evidence on what the understanding——

The Court: I know, but you cannot ask him what his understanding was or anybody else's understanding. You can ask him what they said and did.

Q. Did Mr. Edwards indicate what the effect of redding out would be?

The Court: What did he say? Did he state that this witness heard?

Q. (Continuing) Did he say? A. Well, I had worked with Mr. Edwards on the redding-out process on several occasions, and I don't recall that he made a specific statement, but previously he had explained to us that what he did was to have the parties agree on as many of the pertinent sections of the document as they could and initial them, and he would red them out, and this process, meaning that there was agreement between the parties on that particular phase of the documents, and that the red book itself showed progress towards a conclusion, and that was helpful to the parties in knowing what they had completed and knowing what was left to be done." March 29 Tr., pp. 280-83 (First Supplemental Record).

TESTIMONY OF ALLIED PRESIDENT NICHOLAS J. O'CONNELL CONCERNING FEIA'S NON-INSISTENCE UPON ALPA PARTICIPATION:

"By Mr. Schwartz:

Q. Wasn't the discussion between the pilots of American and the flight engineers of American on the basis of the

American chapter of the FEIA, separate and apart from any other chapter of the FEIA relinquishing its representation rights to ALPA? A. Yes.

Q. And in doing so, would receive certain guarantees and assurances in writing in a merger document between ALPA and the American Airlines chapter; isn't that correct? A. Yes, or any other organization that we might be a member of, which was brought out by your people, not ours." March 29 Tr., pp. 373-74 (First Supplemental Record).

TESTIMONY OF FEIA PRESIDENT JOSEPH MANNING CONCERNING FEIA'S SUGGESTION OF AN INDEPENDENT UNION:

"Q. Was there any discussion about an independent organization of flight engineers and pilots? A. No serious discussion about it. Somebody would mention it occasionally as to an organization other than ALPA, but I think we, the flight engineers, brought it up because we were becoming annoyed at the stringent position of the pilots' committee in respect to their policy manual and their constitution and by-laws of ALPA." April 8 Tr., pp. 828-29 (First Supplemental Record).

TESTIMONY OF FEIA PRESIDENT JOSEPH MANNING CONCERNING FEIA'S AGREEMENT TO JOIN A NEW UNION:

"Q. I now turn to what has been admitted in evidence as Plaintiffs' Exhibit 107. On the second page thereof, in the fourth paragraph from the top, appears the following statement: 'Manning stated clearly that he sees it,'—referring to a crew complement document—'as a timing problem. If we complete the deal and the pilots get out of ALPA and form a new organization, FEIA will join that organization, but it must be an organization.'

Do you recall making that statement on February 12, 1963? A. To the best of my recollection I made a statement similar to that, yes, sir." April 9 Tr., pp. 1034-35 (First Supplemental Record).

TESTIMONY OF AMERICAN'S VICE PRESIDENT JAMES LAMOND CONCERNING AGREEMENTS REACHED DURING JANUARY-FEBRUARY WITH JOINT COMMITTEE:

"Q. Did you hear the flight engineer representatives state in January that they were intent on preserving their separate representation? A. No, sir.

Q. During the period of negotiations after the first of the year, were additional sections initialed and redded out? A. Yes, many.

Q. And to what agreement or document did these sections pertain? A. To the basic agreement.

Q. Were the flight engineer representatives present at the time of such initialing?

Mr. Schwartz: What date?

Mr. Wisehart: I will come to that—after the first of the year.

A. Yes, they were—not at all of them, but at many of them." April 17 Tr., p. 1804 (First Supplemental Record).

TESTIMONY OF AMERICAN'S VICE PRESIDENT JAMES LAMOND CONCERNING FLIGHT ENGINEER PROVISIONS NEGOTIATED BY NICHOLAS O'CONNELL:

"Q. Mr. Lamond, is it your recollection that the engineers were present at virtually all of the negotiating sessions up through February 21st? A. Yes. It is my recollection that the engineers were present, at least two

members of the engineers committee, all the way through those dates.

Q. Were you present when the subject of engineer pay was negotiated? A. I was.

Q. And do you recall if the engineer representatives were present? A. I recall that the sessions pertaining to engineers' pay started with the joint committee, the combined committee, and then for a brief period of time, something like three or four days, the pilot half of the joint committee withdrew and went back to Chicago for some form of meeting at headquarters in that interim, and we continued with the flight engineer members of the committee, went through blackboard exercises pertaining to various pay proposals, and so on, and then went on and completed the flight officers' pay structure in the new contract upon return of the pilot group from Chicago.

Q. Was there a discussion of who would be the spokesman for the employees during these sessions? A. Yes. There were several discussions in terms of spokesmen. It can perhaps be best described in this fashion: That with the combined committee of pilots and engineers you had a very large committee. For the most part we had three or four men on the company's side of the table and we found it virtually impossible to negotiate with 10, 11 men on one side of the table with a single spokesman on the company side of the table.

Mr. Schwartz: Your Honor, I find this witness' answer unresponsive to the question and ask it be stricken and he be asked to answer the question.

Mr. Wisehart: I think the witness is trying to explain what the situation is and if perhaps it is unresponsive I think in the end it will save the time of avoiding additional questions.

The Court: Perhaps it contains a certain degree of conclusions and opinion of the witness. It may be quicker if you were to put another question.

Mr. Lamond, try to avoid giving us your inferences, beliefs, opinions and conclusions. That is what counsel is objecting to.

The Witness: All right, sir.

The Court: Everything else is perfectly proper. Let's start again.

Q. Mr. Lamond, to the best of your recollection will you state what was said during the time when this matter of who would be the spokesman for the employees was discussed? A. I made the request several times and I believe Mr. Whitacre made the request at least once that a spokesman be selected to avoid the confusion of multiple conversation.

Q. Was a spokesman selected?

The Court: Or was the witness told that a spokesman had been selected?

Q. Were you told that a spokesman had been selected? A. I was not told that a spokesman had been selected but when the pilot group rejoined the engineers after their trip to Chicago, there was a spokesman. Captain O'Connell acted as the spokesman, from at least our side of the table, from that point on.

Q. Was Mr. Schwartz present during that time that Captain O'Connell was speaking? A. During at least a portion of it, yes, sir.

Q. Did Mr. Schwartz object? A. No, sir.

Q. Did anyone from the flight engineers' side object A. Not to my recollection.

Q. Was this a time when the subject of flight engineer wages was being negotiated? A. It was.

Q. Who was spokesman for the company at this time? A. Mr. Whitacre.

Q. When Mr. Whitacre wasn't present, who was spokesman for the company? A. I was spokesman for the company. However, in the area of engineer wage negotiations, Mr. Whitacre was not absent through any of those sessions and so I don't believe I ever served as spokesman in regard to that particular section.

Q. When the various sections that you referred to as having been initialed in the presence of the flight engineers were initialed, who were the persons who did the initialing? A. Captain O'Connell and myself, and whenever Mr. Whitacre was present he would initial a section." April 17 Tr., pp. 1809-1813 (First Supplemental Record).

TESTIMONY OF AMERICAN VICE PRESIDENT JAMES LAMOND CONCERNING STATEMENT OF NMB CHAIRMAN AT CLOSE OF NEGOTIATIONS:

"Q. Was Mr. Edwards at the final meeting on March 15th? A. Yes, sir.

Q. What happened at the conclusion of that meeting? A. The meeting concluded at about 6:15 in the evening as I recall it, 6:30. Mr. Edwards made some reference to it having been a long, hard negotiation, and as I recall it we all shook hands all the way around, and that was the end of the meeting.

Q. And he took documents that had been initialed with him, is that correct? A. Yes. I left the negotiating room immediately. As I recall, Mr. Edwards was still there at the time I left. So how long he was there after, I don't know." April 19, Tr., p. 2088 (First Supplemental Record).

TESTIMONY OF AMERICAN VICE PRESIDENT JAMES LAMOND CONCERNING STATEMENT MADE TO NMB CHAIRMAN WITH RESPECT TO NEGOTIATING RETROACTIVE PAY FOR FLIGHT ENGINEERS:

"A. Mr. Edwards called me toward the end of the week of March 18th, as I recall, and in regard to the flight engineers he stated that it was his opinion that representation was not the problem that it had once been; Number 2, that prospective money was not the problem; and Number 3,

that he thought the substantial problem was the question of retroactivity, and he wanted to know if I would be agreeable to meet with Mr. Schwartz and continue the discussions that we had had on the 6th, 8th and 12th.

"And I answered him that I would be as soon as I—my schedule would permit. At the moment my time was pretty well taken up between Mr. Weiss's deposition and appearances down here in the court; but that I would meet with Mr. Schwartz and members of the engineers committee as soon as my schedule would permit, but that he could tell Mr. Schwartz that as we had stated in all of the so-called bull sessions that the company would look favorably on the question of some form of retroactivity for the flight engineers through the medium of the joint committee." April 19 Tr., pp. 2093-94 (First Supplemental Record).

Letter of FEIA President Joseph Manning, March 7, 1963, to W. B. Whitacre (Plaintiffs' Exhibit 1).

March 7, 1963

CERTIFIED MAIL

MR. W. B. WHITACRE,
Vice President—Personnel,
633 Third Avenue,
New York 17, N. Y.

Dear Mr. Whitacre:

I have your letter of February 28, 1963, transmitting the Company's Section 6 notice of opener of existing agreements. We are prepared to enter into discussion of both our openers.

You propose that the discussions coincide with the so-called "Joint Committee's" current negotiations in order to expedite a settlement. You also suggest that bargaining on your proposals continue under the auspices of the "Joint Committee" and Mr. Leverett Edwards, Chairman of the National Mediation Board.

Letter of FEIA President Joseph Manning, March 7, 1963, to W. B. Whitacre, etc.

Since there has been no relinquishment of the bargaining rights of the AAL Chapter, FEIA, all agreements pertaining to Flight Engineers will have to be negotiated with the Chapter's Negotiating Committee. Your past insistence on using the so-called "Joint Committee" approach to deprive our Committee of its right to an independent voice in the determination of Flight Engineer wages forces us to decline to bargain current reopeners on the basis you suggest. Your employment of the device of the so-called "Joint Committee" as a negotiating committee and your intention to sign an agreement with the Pilots affecting Flight Engineers through this device is an impairment of our independent bargaining rights as established by law. We cannot accede to any such suggestion for the future, as we have not in the past.

Any agreement you may have with the Pilots' Negotiating Committee concerning pay or working conditions for the Flight Engineer position was not agreed to by our Negotiating Committee, and is not recognized as a valid and properly negotiated agreement.

Since we would like to negotiate a complete agreement as soon as possible, the Flight Engineers' Negotiating Committee is prepared to meet with you immediately. We have no objection to the presence of Pilot representatives. We not only wish to settle on wages. We would also like to arrive at a settlement encompassing all issues which relate to a satisfactory crew complement agreement and a basic working agreement, but this must be done with no limitation on our independent bargaining rights as Flight Engineers, nor that of the Pilots, until a full settlement is reached, and then only on the fair and honorable terms agreed upon by all parties.

Very truly yours,

JOSEPH V. MANNING
President

CC: Hon. Leverett Edwards,
Mr. N. J. O'Connell,
O'Donnell & Schwartz, Esqs.

Letter of W. B. Whitacre, February 28, 1963, to FEIA with American's Proposed Changes to Basic Agreement Attached (Annexed to Plaintiffs' Complaint as Exhibit A).

February 28, 1963

(6)
Mr. Joseph V. Manning, President
AAL Chapter, Flight Engineers
International Association

Dear Mr. Manning:

Attached hereto is the Company's Section 6 opener covering existing agreements. It suggests that discussions coincide with the Joint Committee's current negotiations, in order to expedite a settlement.

Since Mr. O'Connell is Chairman of the Joint Committee, I have taken the liberty of giving him a copy, as well as the mediator.

Sincerely,

W. B. Whitacre
Vice President—Personnel

cc: The Honorable Leverett Edwards
N. J. O'Connell, Jr.
A. W. Schwartz

Attachment

Letter of W. B. Whitacre, February 28, 1963 to FEIA, etc.

(7) American Airlines' Section 6 Notice Of Intended Change Covering All Flight Engineer Agreements.

American Airlines hereby gives due notice of intended change of each of the existing agreements with the flight engineers. This notice is given, pursuant to Section 6 of the Railway Labor Act, as provided in Section 32 of the Basic Agreement and paragraph T of the System Board Agreement. It applies equally to all sections of all flight engineer agreements and letters of understanding, except the dues-checkoff agreement which expires of its own terms on April 30, 1963.

In accordance with the current negotiations with the Joint Committee of pilot and flight engineer representatives and the "redded out" crew complement agreement, American Airlines proposes:

1. Flight crews on turbojet aircraft will be reduced in size from four to three.

2. All new hires for flight engineer positions will have pilot qualifications.

3. Third crew members will be required to have the training and qualifications prescribed by the Company, but need not have A & P nor A & E certificates.

(8) 4. Cockpit crew members on all aircraft will be consolidated into one craft or class covered by a single basic agreement.

It is suggested that bargaining on the above proposals continue under the auspices of the Joint Committee and Mr. Leverett Edwards, Chairman of the National Mediation Board.

W. B. Whitacre
Vice President—Personnel

cc: The Honorable Leverett Edwards
N. J. O'Connell, Jr.

Letter of FEIA President Joseph Manning, February 28, 1963, to W. B. Whitacre Containing Proposed Changes to Basic Agreement (Annexed to Plaintiffs' Complaint as Exhibit B).

February 28, 1963

(9)

VIA CERTIFIED MAIL

Mr. W. B. WHITACRE,
Vice President—Personnel,
American Airlines, Inc.
633 Third Avenue
New York 17, New York

Dear Sir:

Please be advised that the AAL Chapter, Flight Engineers' International Association, AFL-CIO, desires to negotiate certain changes in the agreement between the Company and the Chapter.

The sections of the contract which the Association seeks to change, in accordance with Section 32 of the agreement, are as follows:

5, 6, 7, 8, 10, 11, 12, 13, 17, 18, 19,
22, 23, 24, 25, 26, 27, 28, 31 and 32

The Association will furnish its specific proposals for mutual consideration at our first meeting so that the negotiations for such changes in the agreement can proceed as soon as possible.

In addition to modifications of the aforementioned sections, the Association intends to request an agency shop agreement and duty rig, minimum pay and credit, ma: mum on duty terms, similar to those now included in the l ots' agreement. More specific proposals in this connectio will also be served at our first meeting which can take pla at any convenient time satisfactory to the Company.

Very truly yours,

JOSEPH V. MANNING
President

CC: Asher W. Schwartz, Esq.

Letter of Counsel for Appellees to NMB, May 8, 1963 (Annexed to Defendant's Exhibit K in Docket No. 28461).

[LETTERHEAD]

May 8, 1963

Mr. EUGENE C. THOMPSON,
Executive Secretary,
National Mediation Board,
Washington 25, D. C.

Dear Mr. Thompson:

I have received in today's mail a copy of the comments of the Air Line Pilots Association and of American Airlines, Inc., to the application of the Allied Pilots Association for certification as the representative of the pilots and co-pilots employed by American Airlines.

As counsel to the American Airlines Chapter, Flight Engineers' International Association, which is the certified representative of the American Airlines flight engineers, who are not a party to the proceeding, I am compelled to bring to your attention their posture at this time in relation to any transfer of representation functions from the Air Line Pilots Association to the Allied Pilots Association, or any other organization purporting to represent the pilots and co-pilots employed by American Airlines.

We do not claim to represent the pilots and co-pilots of American Airlines, nor do we express any view or specific interest as to the representative to be selected by the pilots and co-pilots.

Our interest in this matter lies in the status of two legal proceedings in the Southern District of New York currently before the U. S. District Court, in one of which American Airlines, the Air Line Pilots Association, the AAL Chapter, FEIA, and the pilots' negotiating committee on American Airlines (who are the sponsors of the

Allied Pilots Association), have been litigating critical issues pertaining to the representation function as it applies to the flight engineers employed by American Airlines.

American Airlines has contended that it has reached an agreement with the pilots' negotiating committee which it is prepared to sign with any representative selected by the pilots and co-pilots employed by American Airlines. This agreement includes wages, rules and working conditions pertaining to the employees of American Airlines who will serve in the class or craft of flight engineers.

The Air Line Pilots Association has stated for the record that it will not sign that agreement. American Airlines has stated for the record that it will sign that agreement when there is a proper determination as to the representative of the pilots employed by American Airlines. The pilots' negotiating committee, through its chairman, Nicholas J. O'Connell, Jr., who is Acting President of the Allied Pilots Association, has stated by affidavit that it will not sign an agreement pertaining to the wages, rules and working conditions of the flight engineers represented by the AAL Chapter, FEIA, so long as the Chapter represents the flight engineers.

Despite the certification of the Chapter by the National Mediation Board in May, 1955, American Airlines is claiming in the current proceedings, or one of them, that the Chapter has relinquished its bargaining rights and that the flight engineers have become part of the craft and class of pilots, in accordance with the Board's decision in Case No. C-2946. This is one of the substantial issues which the U. S. District Court is now considering, and upon which the Court will issue its decision in response to the Chapter's application for a declaratory judgment and preliminary injunction.

On or about April 5, 1963, the U. S. District Court issued a temporary restraining order against the pilots' negotiating committee, restraining the committee from signing the above mentioned proposed agreement with American Airlines.

Letter of Counsel for Appellees to NMB, May 8, 1963 etc.

On or about April 17, 1963, the Court extended the temporary restraining order and made it applicable to American Airlines, the Air Line Pilots Association, and the Chapter. Because of objections raised by the pilots' negotiating committee, the temporary restraining order was not continued beyond the 20 days which, the Court concluded, was the maximum length of a temporary restraining order, a "conclusion being principally dictated by what seems to be the clear language and treatment of Judge Hayes in the Pan American and Flight Engineers case." In its consideration of the objections of the pilots' negotiating committee, on April 16, 1963, the Court stated:

> "The 20-day period in certain types of cases, of which this may well be one, is not a sufficient length of time."

The proceeding before District Court Judge Inzer B. Wyatt was begun on March 5, 1963, by the filing of a complaint; a hearing commenced on March 27, 1963; the hearing was concluded on May 3, 1963; the evidence consists of 3,029 pages of testimony and 237 exhibits. Obviously, the U. S. District Court has not had sufficient time in which to consider the merits of the respective claims of the parties during the limited 20-day period of the restraining order, and the order has expired.

During the last day of testimony, May 3, 1963, counsel to all parties and the Court agreed upon a schedule for the submission of briefs which undertakes to provide for the submission of all briefs to the Court by May 27, 1963. The Court will obviously require additional time in which to consider the briefs and render its decision.

A determination by the National Mediation Board prior to the issuance of the decision by the Court and without regard to the nature of that decision will seriously interfere with the orderly administration of justice, since American Airlines is in a position, and has stated that it intends.

to sign a proposed basic agreement which has already been reached and reduced to writing as soon as the Board certifies the representative of the pilots.

The signing of that agreement by American Airlines with whomever the Board determines to be the representative of the pilots and co-pilots and before the Court issues its decision as to the contentions of American Airlines concerning the status of the AAL Chapter, FEIA, may be prejudicial to the Chapter, create a most critical area of further dispute, and substantially impair the representative function as it relates to the flight engineers employed by American Airlines.

Accordingly, the AAL Chapter, FEIA, requests the Board to process the application of the Allied Pilots Association in such a manner as to permit the Board and the parties in this proceeding, as well as the Chapter, which is not a party, to be informed of their respective rights and obligations under the Railway Labor Act, as determined by the U. S. District Court for the Southern District of New York, before the Board makes its determination in this matter.

Respectfully yours,

O'Donnell & Schwartz

AWS: CGM
CC: Hon. W. Willard Wirtz

Letter of FEIA President Joseph Manning, March 8, 1963, to W. B. Whitacre, Containing Proposed Change to Dues Check Off Agreement (Annexed to Plaintiffs' Complaint as Exhibit D).

(LETTERHEAD)

March 8, 1963

(11)

CERTIFIED MAIL

Mr. W. B. WHITACRE,
Vice President—Personnel,
American Airlines, Inc.,
633 Third Avenue,
New York 17, N. Y.

Dear Mr. Whitacre:

Please be advised that the American Airlines Chapter, Flight Engineers' International Association, AFL-CIO, gives the Company notice, in accordance with the provisions of Section 6 of the Railway Labor Act, of its intent to change the dues check-off agreement now in effect.

Among other things, of which you will be advised when we meet to negotiate changes in this agreement, the Chapter will propose that Paragraph G be changed to provide as follows:

> "This agreement shall remain in full force and effect until the termination date of the basic agreement, and shall renew itself without change for the term of each succeeding basic agreement unless written notice of intended change is served by either party hereto at least thirty (30) days prior to the termination date of the applicable basic agreement."

It is my suggestion that we negotiate changes in this dues check-off agreement simultaneously with our negotiations under the pending reopeners.

Very truly yours,

JOSEPH V. MANNING
President

Affidavit of James J. Lamond, April 30, 1963, and Exhibit E Thereof.

(140) JAMES J. LAMOND, being duly sworn, deposes and says:

1. I am Vice President—Flight of American Airlines, Inc., defendant in the above entitled action, and make this affidavit in opposition to the application for a preliminary injunction by plaintiffs (hereinafter called the "Union").

2. The Union formerly was the collective bargaining representative of a group of defendant's employees known as "flight engineers". The flight enginers work in the cockpit of large commercial aircraft. They assist the pilots.

3. The jurisdictional conflict between the (141) bargaining representative of the pilots and flight engineers resulted in the crew complement dispute, which has caused numerous strikes in air transportation. Defendant was struck by the pilots for approximately two weeks, beginning in December 1958, and by the flight engineers for approximately one week in February 1961. These and other labor disturbances led to the creation of the so-called "Feinsinger Commission" by the President of the United States.

4. The Feinsinger Commission made a lengthy investigation of the dispute and issued reports on May 24 and October 17, 1961. The May 24 report described the controversy and recommended bargaining to resolve it. When such bargaining failed, the Commission issued its October 17 report prescribing terms of settlement. Defendant accepted these terms, but its employees did not.

5. One of the chief issues before the Feinsinger Commission was the Union's demand for separate representation. This demand was the cause of the February 1961 strike.

6. In its May 24 report, the Feinsinger Commission found that the underlying risk which FEIA sought to avoid

by separate representation ". . . has been magnified out of all proportion" (p. 21). It described the situation as follows (*id.* at 22):

> "Each union asserts that its position is not self-serving, but designed simply to insure safe operations. There is ample reason, however, to believe that FEIA is partly (142) motivated by a desire to fence the pilots out in order to preserve its members' jobs, the craft, and FEIA's representation rights, and that ALPA is likewise partly motivated by a desire to elbow FEIA out of its representation rights, with all that that implies.
>
> "This situation, in which two unions seek irreconcilable objectives and the carriers are unable to satisfy one without offending the other, is intolerable. It should be evident to the unions, which purport to base their positions on considerations of safety, that the collision of their views in itself threatens safety and efficiency and economy of operations as well. It should also be evident to them that if they continue to steer a collision course, the public will demand action much more drastic than that which the Commission proposes.
>
> "The most obvious solution to this problem is merger or some form of consolidation. *In the considered opinion of the Commission, neither peace nor safety on the airlines will be fully assured as long as there are two unions in the cockpit.*" (Emphasis added.)

The Commission further stated that ". . . every disinterested observer, governmental or private, who has expressed an opinion to the Commission shares the view that the flight crew should be represented by one union. The Commission firmly endorses such a solution" (p. 23).

Affidavit of James J. Lamond, April 30, 1963, and Exhibit E thereof.

7. The National Mediation Board determines which craft or class of employees is appropriate for collective bargaining representation. In a decision issued January 17, 1961, the Board, through a committee, found that there is just one craft or class of flight deck employees on United Air Lines, Inc. In other words, (143) it found that separate representation of flight engineers was no longer appropriate. A copy of that decision is attached hereto as Exhibit A, and is also reported in 3 NMB Craft or Class Determinations 56 (1961).

8. The NMB's *United* decision caused the Union to strike defendant in February 1961, on the grounds that that determination would be equally applicable to defendant's flight engineers.

9. The Union received a certificate from the NMB approximately 8 years ago, which entitled it at that time to represent defendant's flight engineers. Such certification did not contemplate the changes in qualifications, training, and job duties subsequently brought about by the introduction of jet aircraft, in 1959, nor did it contemplate the subsequent *United* decision.

10. The Feinsinger Commission, in its May 24 report, found that

> "These proceedings originated with a strike by certain flight engineers against a decision of a governmental agency, involving United Air Lines. A strike of any kind against the Government offends the tradition of the American trade union movement". (p. 19).

A copy of the May 24 report is attached hereto as Exhibit B.

11. There have been no subsequent decisions by the National Mediation Board which modify or qualify its determination in the case of United Air Lines.

Affidavit of James J. Lamond, April 30, 1963, and Exhibit E thereof.

12. The collective bargaining agreement in effect between the Union and defendant at the time of the (144) Union's 1961 strike has not been superseded. In bargaining under it, the parties are at an impasse on wages. A copy of the agreement with supplemental agreements is attached hereto as Exhibit C.

13. The Dues Check-Off Agreement is a supplemental agreement on pages 65-69 of Exhibit C.

14. Unlike other agreements, the Dues Check-Off Agreement provides unequivocally for its termination on April 30, 1963. Paragraph G, the provision in question, reads as follows:

> "This Agreement shall become effective May 1, 1958 and shall continue in full force and effect until April 30, 1963, and shall be subject to renewal thereafter only by mutual agreement of the parties hereto."

15. Another supplemental agreement, found on pages 57-63 of Exhibit C, is the System Board Agreement. The System Board Agreement creates an arbitral body, pursuant to 45 U. S. C. A. §184, for grievances and disputes concerning interpretation and application of contractual provisions.

16. The basic working agreement is found on pages 3-55 of Exhibit C. Section 25 gives flight engineers a right to submit grievances "concerning any action of the Company affecting them". Such grievances, if not resolved in the grievance procedure, may be appealed to the System Board of Adjustment.

17. No grievance or application to the System Board of Adjustment has been submitted by any flight (145) engineer or the Union with respect to interpretation of the duration clause of the Dues Check-Off Agreement. The Union has

known of defendant's position as to the duration clause since on or about March 15, 1963. A copy of the letter of March 15, 1963 from Mr. A. Di Pasquale, Assistant Vice President—Labor Relations, to the Union's president, Mr. Joseph V. Manning, is attached hereto as Exhibit D.

18. The duration clause of the basic working agreement is found in Section 32 thereof (Exhibit C, p. 53). Paragraph A provides:

> "This Agreement shall become effective May 1, 1958 and shall continue in full force and effect until April 30, 1963 and shall renew itself without change until each successive April 30 thereafter unless written notice of intended change is served in accordance with Section 6, Title I, of the Railway Labor Act, as amended, by either party hereto at least sixty (60) days prior to April 30 in any year after April 30, 1962".

19. The Union failed to give the 60-day notice required by the foregoing provision with respect to the Dues Check-Off Agreement. The Union's check-off notice attached to its complaint herein as Exhibit D is dated March 8, 1963, but was not received by defendant until March 15, 1963.

20. In the notice of opener given by defendant prior to the 60-day period, defendant specifically avoided opening with respect to the Dues Check-Off Agreement. Attached to the Union's complaint as Exhibit A, defendant's notice states that it is applicable "to all sections of (146) flight engineer agreements and letters of understanding, except the dues check-off agreement which expires of its own terms on April 30, 1963." The duration clause of the Dues Check-Off Agreement provides the subject of renewal may be negotiated only by mutual con-

Affidavit of James J. Lamond, April 30, 1963, and Exhibit E thereof.

sent. Defendant has never consented to reopen this subject.

21. The consistent practice with respect to flight engineer agreements with the Union in the past has been to give at least 60-days notice of intended change.

22. In August 1962, defendant's pilots proposed a crew complement settlement which would include single representation for flight deck crew members.

23. On November 1, 1962, the flight engineer representatives joined with the pilot representatives in meeting with defendant for bargaining purposes. The flight engineer representatives, on that date, announced that the chairman of the pilot committee was their spokesman and that "We're all pilots now." The foregoing statements were made by Mr. Joseph V. Manning, President of the Union, in the presence of Mr. Michael O'Connell, a representative of the Chairman of the National Mediation Board.

24. Defendant relied on the foregoing representations and recognized the joint committee of pilot and flight engineer representatives for collective bargaining purposes. Joint bargaining took place on a virtually continuous basis for about 4 months thereafter and, in reliance on single representation, defendant made many substantial concessions involving the flight engineers in such bargaining.

(147) 25. After a crew complement agreement was initialed by representatives of the flight engineers, the pilots, and the defendant, on December 1, 1962, and delivered to the mediator for "redding out", only the defendant's representative and the chairman of the joint committee initialed provisions which were settled in bargaining, on the assumption that single representation of the flight engineers and pilots was an accomplished fact. The flight engineer

representatives were present and knew that this procedure was being followed, but they did not object to it.

26. Such bargaining and settlements took place in the presence of the Chairman of the National Mediation Board, Mr. Leverett Edwards, or his representative. A settlement was reached on March 15, 1963. Although the flight engineers were no longer attending the negotiating sessions at that time, they had never repudiated the agreements reached in their behalf. In addition, by refusing to accept the numerous invitations to confer and negotiate concerning other items of interest to them, they waived any right to require bargaining on such items.

27. Among the items settled during this course of bargaining was a dues check-off agreement which would cover all flight deck crew members and require payment of such dues to a different organization. A copy of such agreement is attached hereto as Exhibit E. The agreement in question, while specifying "pilots", was also understood to be applicable to flight engineers.

28. The foregoing agreement has not yet gone into effect. It is part of a settlement which is currently the subject of litigation in this Court (63 Civ. 585).

29. The pilot group with whom the flight engineers joined in negotiating a settlement has formed a new (148) union called the Allied Pilots Association and, on April 24, 1963, submitted to the National Mediation Board an application for a representation determination. A copy of an April 24 affidavit of Mr. Nicholas J. O'Connell, Acting President of the Allied Pilots Association, is attached hereto as Exhibit F. The pending proceedings before the National Mediation Board are covered in paragraphs 7-9 of the affidavit, and the participation of the flight engineers in the joint negotiations is described in paragraphs 11 and 12. In paragraph 12 the following statement appears:

Affidavit of James J. Lamond, April 30, 1963, and Exhibit E thereof.

> "The representatives of the American Airlines pilots stand ready today, as they always have, to honor the understanding with the flight engineer group and go forward with any understandings reached during the process of joint negotiations."

On information and belief, the Union has not sought to confer or negotiate concerning this offer, either with defendant or the Allied Pilots Association.

30. The National Mediation Board asked defendant for the number of pilots who are affected by the representation petition of the Allied Pilots Association. Defendant's reply, a copy of which is attached hereto as Exhibit G, points out that flight engineers were included as a part of the same craft or class of flight deck crew members in the decision attached hereto as Exhibit A. If the National Mediation Board so finds here, this may result in a change in the collective bargaining representative.

31. The Dues Check-Off provision in the Railway Labor Act is found in Section 2 Eleventh (b) (45 U. S. C. A. §152). It limits such agreements to deductions from wages of a carrier's employees "in a craft or class" and payment is similarly limited "to the (149) labor organization representing the craft or class of such employees". In view of the pending proceedings in the National Mediation Board, substantial doubts exist as to (a) whether the flight engineers now constitute a separate craft or class and (b) whether the Union is a bargaining representative. The latter question also is raised in the pending litigation in this Court in which the Union seeks injunctive relief to establish its collective bargaining status. Defendant's position in said suit is that the Union's collective bargaining status has been superseded and defendant has applied for reference to a special master in order to determine the desires of a majority of the employees concerned. Until

the conclusion of the pending litigation and National Mediation Board proceedings, defendant could not enter into a new check-off agreement with the Union without risking a violation of the Railway Labor Act.

WHEREFORE, the Union's application for a preliminary injunction should be denied.

JAMES J. LAMOND

(Sworn to before Murray Padgug, April 30, 1963.)

Exhibit E, Annexed to Affidavit of James J. Lamond, Dated April 30, 1963.

(213) AGREEMENT BETWEEN AMERICAN AIRLINES, INC. AND THE AIR LINE PILOTS IN THE SERVICE OF AMERICAN AIRLINES, INC., AS REPRESENTED BY .....,
(Name of Organization)
COVERING THE ESTABLISHMENT AND PROCEDURES FOR ..... REGULAR MEMBERSHIP
(Name of Organization)
DUES CHECK OFF.

IT IS MUTUALLY AGREED THAT:

A. The Company agrees to deduct from the monthly pay of each pilot employee and remit to the (*Union*) membership dues uniformly levied (not including initiation fees, fines, penalties or assessments) in accordance with the Constitution and By-laws of the Union and as prescribed by the Railway Labor Act, as amended, a monthly amount equal to the Union's regular and usual monthly dues, which monthly amount would be required to be paid by such pilot if a member, provided such pilot voluntarily executes the following agreed-upon form, known as the "Check-Off Form", which shall be prepared and furnished by the Union.

Exhibit E, Annexed to Affidavit of James J. Lamond, Dated April 30, 1963.

ASSIGNMENT AND AUTHORIZATION FOR CHECK-OFF OF UNION DUES

.....
(Name of Organization)

To: American Airlines, Inc.
Attention: Manager-Payroll
633 Third Avenue
New York 17, N. Y.

I, ..., hereby assign to
(Print name, initials and surname)
....., my Union dues from any wages
(Name of Organization)
earned or to be earned by me as your employee. I authorize and direct you to deduct from my pay each month the standard monthly Union dues, in the amount of one and one-half percent (1½%) of my gross earnings (or such monthly dues as may hereafter be established in accordance with the Constitution and By-laws of the Union as my membership dues).

(214) This assignment, authorization, and direction may be revoked by me in writing at any time after the expiration of one year from the date hereof, or upon the termination date of the dues Check-Off Agreement between the Company and the Union, whichever occurs sooner.

This authorization and direction is made subject to the provisions of the Railway Labor Act, as amended, and in accordance with the Check-Off Agreement between the Union and the Company.

Signature of Employee .....

Employee No. .....

Station .....

Dated: .....

Exhibit E, Annexed to Affidavit of James J. Lamond, Dated April 30, 1963.

B. All Check-Off forms will be submitted through the Chairman of the Master Executive Council who will forward the original signed copy to the Manager-Payroll of the Company, care of American Airlines, Inc., 633 Third Avenue, New York 17, N. Y. A properly executed Check-Off form, filed before the 15th of any month will become effective the 1st of the month following its receipt by the Manager-Payroll of the Company. Illegible or improperly executed forms will be returned to the said Chairman of the Master Executive Council.

C. Any notice of revocation as set forth in the Check-Off Form must be in writing, signed by the pilot, and delivered by registered mail, addressed to the Manager-Payroll of the Company, with copy to the Chairman of the Master Executive Council. Check-off Forms and notices so received by the Company will be stamp-dated on the date received and will constitute notice to the Company on the date received and not when mailed.

D. The Company will remit to the Union (MEC Chairman) a check in payment of all dues collected each month, as soon as possible after the payday on (215) which deduction was made. These remittances will be subject to normal accounting practice with respect to adjustments necessary because of the methods involved in the deduction procedure. The Company remittance of Union membership dues to the Union will be accompanied by a list of names, employee numbers, station numbers and amounts of deductions of the pilots for whom deductions have been made in that particular month, arranged in order of their employee numbers.

E. 1. No deductions of Union dues will be made from the wages of any pilot who has executed a Check-Off Form and who has been transferred to a job not covered by the existing Basic Agreement entered into by the parties, or who is transferred to supervisory duties, or who is on leave without pay. Upon return to work as a line pilot, deduc-

Exhibit E, Annexed to Affidavit of James J. Lamond, Dated April 30, 1963.

tions will be automatically resumed as heretofore, provided the pilot has not revoked the assignment in accordance with this Agreement, and provided it is in accordance with the other appropriate provisions of this Agreement and of the Railway Labor Act, as amended.

2. A pilot who has executed a Check-Off Form and who resigns or is otherwise terminated from the employ of the Company shall be deemed to have automatically revoked his assignment and if he is recalled or reemployed, further deductions of Union dues will be made only upon execution and receipt of a new Check-Off Form.

(216) F. Collection of any back dues owed at the time of starting deductions for any pilot, and collection of dues missed because the pilot's earnings were not sufficient to cover the payment of dues in the specific pay period, and collection of dues missed because of accidental errors in the accounting procedures, will be the responsibility of the Union and will not be the subject of payroll deductions, and the Company shall not be responsible in any way because of such missed collections.

G. Deductions of membership dues shall be made from the end of the month paycheck on the basis of one and one-half percent (1½%) of gross earnings, provided there is a balance in such paycheck sufficient to cover the amount after all other deductions authorized by the employee or required by law have been satisfied. In the event of termination of employment, the obligation of the Company to collect dues shall not extend beyond the month in which the pilot's last day of work occurs.

H. In cases where a deduction is made which duplicates a payment already made to the Union by a pilot, and where a deduction is not in conformity with the provisions of the Union Constitution and By-Laws, refunds to the pilots will be made by the Union.

Affidavit of E. G. Hamilton, May 17, 1963.

I. American Airlines, Inc. shall not be held liable for any claims which may be made by the pilot or pilots by virtue of the wrongful (other than willful) application or misapplication of any of the terms herein.

(217) J. This Agreement shall become effective and shall be deemed to be a part of the Basic Agreement and shall continue in full force and effect in accordance with the provisions set forth in Section 33 of the Basic Agreement, effective , 1963.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement this day of , 1963.

WITNESS: FOR AMERICAN AIRLINES, INC.

.....

WITNESS: FOR THE (Name of Organization)

.....

Affidavit of E. G. Hamilton, May 17, 1963.

E. G. HAMILTON, being duly sworn, deposes and says:

1. I am Vice Chairman of the American Airlines Flight Engineers System Board of Adjustment, and have been a member of that Board since February 1959. Prior to that time, I was a member of the Board in 1949, 1955, 1956 and 1957.

2. The Adjustment Board is established by agreement of the parties pursuant to the requirements of Section 204 of the Railway Labor Act (45 U. S. C. A. §184). It is composed of two representatives of the Company and two

Portion of Affidavit of Nicholas J. O'Connell, April 8, 1963 (from Docket No. 28473).

representatives of AAL Chapter, FEIA. In the event of a deadlock, a neutral referee decides the dispute. At the present time, The Adjustment Board has one case on its docket.

3. If the four members of The Adjustment Board can not agree on the person to be chosen as neutral referee, he is selected by the parties or designated by the National Mediation Board.

4. Any grievance appeal to The Adjustment Board would be docketed immediately and a hearing thereon could be had in the normal course of events as early as the first week in June or, as provided in paragraph I of the System Board Agreement, any two members of the Board may request a hearing within fifteen days of such request.

E. G. HAMILTON

(Sworn to before Emilie M. Petersen, May 17, 1963.)

Portion of Affidavit of Nicholas J. O'Connell, April 8, 1963 (from Docket No. 28473).

(293) "12. After a number of meetings, representatives of American's pilots, all of whom were on the Negotiating Committee described above, and representatives of American's flight engineers agreed to the formation of a Joint Negotiating Committee for the purpose of negotiating a single (294) contract with the company which would cover the terms and conditions of employment for all cockpit personnel. On November 1, 1962, a negotiating meeting was held between the company and members of the Joint Committee. At this meeting both the president of the FEIA American Chapter, Joseph Manning, and the Chapter's counsel, Asher Schwartz, advised the company

Portion of Affidavit of Nicholas J. O'Connell, April 8, 1963 (from Docket No. 28473).

that negotiations would henceforth be conducted jointly for the purpose of achieving a single contract under my chairmanship.

CREW COMPLEMENT AGREEMENT.

13. After the announcement to the company of the Joint Negotiating Committee, collective bargaining proceeded on this basis, with meetings being held between the Joint Committee and the company. Since it was agreed that the most pressing issue was the crew complement question, we turned our attention first to that issue. The negotiations were conducted with a view towards arriving at a settlement which would be fair and equitable to all concerned, both flight engineers and pilots, while at the same time providing a maximum of safety to the traveling public. It was to arrive at such a result that concessions were made by all parties to arrive at a solution which would be fair and equitable to all concerned.

14. Following the so-called redding out procedures of the National Mediation Board, agreement on the (295) crew complement questions was reached by all the parties on December 1, 1962, and on that date was initialed by representatives of the company, Joseph Manning, a flight engineer representative on our Joint Committee (and president of the American Chapter) and me.

15. It was my understanding and that of the other signatories to this crew complement agreement that we had reached a final understanding on this question However, the crew complement agreement was to be part of a final contract which was to include a settlement of economic issues such as wages, hours, etc. which were still to be negotiated. Therefore, it was not necessary for us to do any more than to initial the agreement on the crew complement question at that time since it would be included in the formal contract which we would ultimately sign. It was,

Portion of Affidavit of Nicholas J. O'Connell, April 8, 1963 (from Docket No. 28473).

however, completely understood that we would not re-examine in any subsequent negotiations the questions we had settled in the crew complement agreement.

16. After concluding the crew complement agreement, as described above, the Joint Committee continued to negotiate with the company on various other issues. Again, these negotiations were conducted under my chairmanship and with the participation of both pilots and flight engineers. We continued in this fashion until late February. Subsequent meetings were not attended by flight engineers. We never received any letter or other statement from the American Airlines Chapter, FEIA or from the members of the Joint Committee that they would no longer participate in our negotiations with the company or that the Joint Committee should not proceed in any negotiations."

(296) 17. In light of the foregoing and the fact that the Committee was reaching a final agreement on all issues with the company after more than two years of negotiations we continued to have bargaining sessions which resulted in a proposed overall agreement with the company in mid-March. 1963.

MEETINGS TO DISCUSS PROPOSED CONTRACT.

18. During the period March 19 through March 22, 1963, American Airlines Pilots' MEC meetings were held to discuss the proposed agreement. As a consequence the Pilot MEC unanimously ratified the agreement. This was done with full knowledge of the objections raised by the Air Line Pilots Association and after a number of meetings had been held with ALPA over the preceding months in the hopes of reconciling it to the position and wishes of the American Airlines Pilots. Again, I would like to emphasize that the members of the MEC who took this action are the only bargaining representatives elected by the vote of American Airlines Pilots.

Portion of Affidavit of Nicholas J. O'Connell, April 8, 1963 (from Docket No. 28473).

19. It was decided by the MEC that it would be desirable for the local chairman (each of whom is a member of the MEC) to call meetings at their respective base stations in order to explain and discuss the contents of the proposed agreement. Invitations to attend these discussion-sessions were to be extended to American's flight engineers, as well as to the pilots, in order that they might participate in these meetings and present their views if they wished.

(297) 20. The first such meetings were held on Tuesday, April 2, in Buffalo and in Boston and were to be followed by meetings at other bases as established by the local representatives. The MEC does not have the power nor authority to call any of these meetings directly—that is within the exclusive responsibility of the local representatives.

21. The immediate effect of the injunction sought by the American FEIA Chapter would be to disrupt and interfere with the meetings as described. As such it would involve the violation of the most fundamental rights of American Airlines flight crew personnel to peacefully assemble and discuss problems of great economic and professional concern to them. Indeed, irreparable damage to these constitutional rights has already been done under the guise of the court's restraining order. At this writing we understand on the basis of reliable reports that the president of the Air Line Pilots Association has distributed a letter to American pilots leading many of them to believe that the court has enjoined the scheduled meetings. This, of course, is untrue but I have received numerous calls from pilots in the Chicago area telling me that they understand they may not hold their scheduled meetings. We are trying to correct their misunderstanding, but, of course, the damage has been done.

Portion of Affidavit of Nicholas J. O'Connell, April 8, 1963 (from Docket No. 28473).

22. In Mr. Manning's affidavit he refers to an organization called the Allied Pilots Association. I want (298) to emphasize again that the meetings which are scheduled for the discussion of the proposed contract are being called by local representatives at the various American Airlines bases and will be addressed by myself and other defendants in our capacity as duly elected officers of the pilots' MEC and members of the Negotiating Committee. Our avowed purpose for forming the Allied Pilots Association is in order that we may, if the flight personnel so desire, execute an agreement through the offices of a new organization which will not have been directly involved in any of the troublesome events which have gone before.

23. The scheduled meetings and the freedom of the flight crew personnel to discuss the terms of the proposed contract at those meetings are indispensable to the early attainment of the substantial economic benefits contained in that agreement. If it is found that the agreement is unacceptable to the majority of flight crew personnel immediate steps would have to be taken to conclude a satisfactory agreement with the company. If, on the other hand, the majority of the flight crew personnel approve the agreement (and from the reports we believe that an overwhelming majority will approve) then it is imperative that we take immediate steps to put the agreement into effect so that those who are affected by it may enjoy the benefits it contains and which have been sought in more than two years of continuous and arduous negotiation.

24. The defendants wish to submit to the court a memorandum of law citing legal authorities which will (299) clearly confirm our rights. However, I respectfully submit to the court that the facts speak for themselves and that the injunctions sought by the FEIA American Chapter would violate our most fundamental constitutional and statutory rights.

Affidavit of William B. Whitacre, July 11, 1963, with Exhibits D and E (Submitted in Connection with Suggestion of Mootness in Docket No. 28473).

(532) WILLIAM B. WHITACRE, being duly sworn, deposes and says:

1. I am Vice President—Personnel of American Airlines, Inc., defendant in this case.

2. This affidavit is supplied in support of defendant's position that, because of new evidence, the motions now under consideration by the Court have become moot. The new evidence in question is set forth in this affidavit.

3. On July 9, 1963, American Airlines signed collective bargaining agreements with the Allied Pilots Association. Section 1 of the basic agreement reflects (533) the recognition of Allied as the collective bargaining representative for American Airlines pilots.

4. Allied also was given a letter of recognition, in accordance with its demand. A true and correct copy of the letter is annexed hereto as Exhibit A.

5. Allied's demands for recognition are reflected in letters dated July 3, 1963 and June 19, 1963, true and correct copies of which are annexed hereto as Exhibits B and C respectively.

6. The collective bargaining agreements between American Airlines and the Allied Pilots Association, which have a duration of two years, in no way affect the separate bargaining status of the AAL Chapter, FEIA. Moreover, a July 9, 1963 letter from Allied to American contains the following statement:

> "It is not our intention that the documents signed today be interpreted as covering, or in any way jeopardizing, the rights of the American flight engineers."

Exhibit D, Annexed to Affidavit of William B. Whitacre, dated July 9, 1963.

A true and correct copy of the letter is annexed her to as Exhibit D.

7. Accordingly, American Airlines has notified the AAL Chapter, Flight Engineers International Association of the Company's willingness to commence bargaining with the flight engineers separately. The notification is (534) contained in a letter of July 11, 1963 from me to Mr. Joseph Manning, a true and correct copy of which is anexed hereto as Exhibit E.

WILLIAM B. WHITACRE

(Sworn to before Nancy L. McClure, July 11, 1963.)

Exhibit D, Annexed to Affidavit of William B. Whitacre, dated July 9, 1963.

(LETTERHEAD)

July 9, 1963

(546)

WILLIAM B. WHITACRE,
Vice President—Personnel
American Airlines, Inc.
633 Third Avenue
New York, N. Y.

Dear Mr. Whitacre:

In connection with the pilot contract being signed today, the position of the Allied Pilots Association concerning the flight engineers on American Airlines should be made clear

Exhibit D, Annexed to Affidavit of William B. Whitacre, dated July 9, 1963.

to the company. It is not our intention that the documents signed today be interpreted as covering, or in any way jeopardizing, the rights of the American flight engineers.

If at any time in the future the American Airlines flight engineers indicate a desire to become part of the American pilot group and they have so indicated by the positive action of a majority of their group that they wish to join with us and to have one union in the cockpit, the Allied Pilots Association will accept all American flight engineers as pilot members, on fair and reasonable terms respecting the rights of both the flight engineers and the pilots. These terms shall include guaranteeing the priority to each flight engineer, in accordance with his seniority to the third seat on all aircraft operated by the company with three or more cockpit crew members, and the right to non-discriminatory representation.

Sincerely,

FOR THE ALLIED PILOTS ASSOCIATION

NICHOLAS J. O'CONNELL, JR.
President

NJO cb

Exhibit E, Annexed to Affidavit of William B. Whitacre, dated July 11, 1963.

(LETTERHEAD)

July 11, 1963

(547)

MR. JOSEPH V. MANNING
President—Flight Engineers
International Association,
AAL Chapter
Box 968
Palos Verdes Estates, California

Dear Mr. Manning:

As you have been previously notified, American Airlines entered into agreements on July 9 with the Allied Pilots Association. These newly negotiated agreements relate to pilots only.

The Allied Pilots Association, at our request, has given us assurances for the protection of flight engineers. A copy of their letter containing such assurances is enclosed for your information.

Because of these developments, we are now prepared to resume bargaining with AAL Chapter, FEIA.

Sincerely,

W. B. WHITACRE
Vice President—Personnel

Enclosure
cc: National Mediation Board

Letter from Counsel for Appellees to James J. Lamond, July 19, 1963.

[LETTERHEAD]

July 19, 1963

Mr. James J. Lamond, Jr.,
American Airlines, Inc.,
633 Third Avenue,
New York 17, N. Y.

Dear Jim:

This will confirm the understanding which we reached on the telephone this afternoon that the Flight Engineers' Committee will meet with management on Thursday, July 25, 1963, at 1:30 P. M., and possibly through Wednesday, July 31, 1963, at the offices of the Company.

We have a further understanding that neither these meetings nor the discussions had at any of them are to jeopardize or have any effect on the position of any party in the Ruby and Manning cases pending before the United States District Court.

Sincerely yours,

O'DONNELL & SCHWARTZ

AWS:CGM
CC: Mr. Joseph V. Manning

Portion of Negotiating Notes, January 31, 1963.

Whitacre opened with remarks that Company proposes to discuss Flight Officer pay with the joint committee under O'Connell. Company is not addressing itself to the old F/E pay opener.

Manning does not agree with this approach. Lyons was asked to comment but declined. Preferred to remain non-participant until Company and Flight Engineers work out the basic pay details. As to future, pilots will be interested in Flight Officer rates since positions will ultimately be filled by pilots. Suggested that we not stand on technicalities but put forth figures for discussion.

Lyons also stated that the pilots were ready to give the Engineers complete backing in achieving their goals. Sees no reason why Engineers cannot be brought up to industry standard before application of reduced hours, gimmicks and pension plan.

JVM* We are here as separate committee working jointly to reach agreement on crew complement, basic agreement and merger. We have a position under the Railway Labor Act and intend to protect it. In terms of details maybe the approach is, as WBW hinted, to consider two wage scales—Flight Officers and Flight Engineers.

WBW** Understand your position on maintaining identity until agreement is reached. However, sooner or later you must decide what you are going to do.

ECP*** Are we not still open on wages?

WBW Yes and you can process as you see fit.

ECP Then what is our problem.

WBW The problem of whether you affiliate with American pilots or with ALPA.

ECP Don't see the connection.

WBW All one pot as far as AA is concerned. We are putting a lot on the line and must be assured a single cockpit union to get our money's worth. We cannot consider dealing

---

* J. V. Manning..... President, FEIA, AAL Chapter.
** W. B. Whitacre..... Vice President—Personnel, American.
*** E. C. Petree..... FEIA Negotiating Committee.

Portion of Negotiating Notes, January 31, 1963.

with FEIA separately. If you are committed to join pilots we have one bargaining situation. If you stay FEIA we have another. You can have it either way.

JVM Let's review. These negotiations are an extension of the request by Goldberg last July, all aimed at solution of the crew complement problem. Now we are talking F/E wages. FEIA is here speaking for F/E's. We are prepared to merge but have not as yet done so. We have never indicated otherwise.

WBW I disagree. When you initialled the crew complement document you set up the one union deal.

JVM Down the road.

WBW Yes down the road. Such being the case we can confine our thinking to the Flight Officer position.

JVM Yes but the F/E's have a wage opener.

WBW O. K. Make me a proposal.

MA* If there is any doubt in your mind about whether we will ultimately merge with the pilots, just ask them.

FEIA members took recess at 2:45 P.M. Went to 307. Pilots joined them.

Resumed at 3:25 P. M. O'Connell now in attendance.

JVM We're somewhat surprised at your concern that we may back out of the deal. Feel we got this discussion off on the wrong foot. Time is working against us. Good faith has prevailed to this point, no need to change now. Regardless of technicalities, we should talk substance.

Manning then made a written proposal involving 9% retroactive to 5/1/61, 8½% retroactive to 5/1/62 and 100% of co-pilot pay effective 5/1/63, immediate effectiveness of present 21E & F, participation in pilot pension plan and reduced hours. Proposal was headed AAL Chapter, FEIA, AFL-CIO.

Proposal also committed Engineers to going along with union shop or agency shop as negotiated by pilots.

---

* M. Apkarian..... FEIA Negotiating Committee.

Portion of Negotiating Notes, February 1, 1963.

N. J. O'Connell and Manning arrived with Asher Schwartz at 2:45. W. B. W., Schwartz & Manning discussed the status of F/E's in regard to wage opener. Basic issue—must the Company negotiate a separate wage agreement with FEIA before FEIA & ALPA consolidate.

WBW Company maintains that there is no connection between these negotiations and the FEIA wage opener.

AS* When we desired to open on wages, Kayser asked us to hold off. We did. After a while we came in again and were told to hold off since the Company did not know how the crew complement problem could be solved. Thereafter the Company continuously refused to discuss wages. At our meetings in Washington you offered us 5% retro to 5/1/61 with another 3% effective 5/1/62 and agreed to buy the TWA crew complement settlement. This offer was made on July 12, 1962—this to close out our negotiations.

DP** In all our prior negotiations with FEIA, the new concepts of reduced hours and improved duty rigs did not exist.

AS Yes but through all of your negotiations with the pilots since last July we have been standing by awaiting a solution of our wage problem. In August, O'Connell told us about the merger deal he had in mind which, he said, would include an increase for the Engineers. We went to work with him and ultimately put together a merger agreement which was 99% completed. Subsequently we worked with you and ALPA in completing a crew complement document which we finished in December. About this time you met with us alone and discussed wages—you said you would negotiate with the pilots on F/E wages and even mentioned a percentage of copilot pay. We disagreed then went to N J O and he agreed that we would negotiate our own

---

* A. Schwartz..... Counsel, FEIA.

** A. DiPasquale..... Assistant Vice President—Labor Relations, American.

Portion of Negotiating Notes, February 1, 1963.

wages as part of the whole package. You cannot now tell us that our wages are not open for negotiations with us. Until we actually merge with the pilots, we negotiate for ourselves.

Don't see it that way. We are working jointly so how can I accept a proposal made in the name of FEIA.

You are talking about yesterday's proposal. I am guilty of that. This was in response to your discussion with us the other day during which you implied that the cost of all of the benefits of the new agreement would be deducted from our wage gains.

If you want to discuss your Section 6, the Company's position is that we are at an impasse. If you want to discuss the proposed merged deal, you forget your Section 6.

I have no intention of taking away your rights under the Railway Labor Act. If you want to negotiate wages separately we will talk but the benefits of the pilot agreement go out the window.

We realize that we are not negotiating reduced hours and duty rigs as part of our wage opener. But if we do not make a deal on wages, there may be no other deals. We have no objection to be considered a part of a joint negotiating committee for purposes of crew complement but not at the sacrifice of our right to negotiate wages.

---

* A. M. Wisehart..... Counsel, American.

Flight Engineer Wage Proposal Made to American, February 2, by the FEIA in the Name of the "Joint Committee Representing the Cockpit Crew Members."*

Flight Officer Counter Proposal.

The Joint Committee representing the cockpit crew members in the current negotiations to settle the crew complement issue on American Airlines make the following counter-proposal based on the assumption that they are merging with the Pilots in an over-all settlement of the crew complement issue:

1. Same as Company February 1, 1963 proposal, Para. # 1.

2. Same as Company February 1, 1963 proposal, Par. # 2.

3. The Committee proposes that the Flight Officer pay during the term of the Pilot's new basic working agreement shall be 98% of the co-pilots yields in such agreement by equipment for 85 hours of flying one-half day, one-half night for 75 hours of flying (pay and credit) on the jet aircraft, and for 80 hours of flying (pay and credit) on piston and turbo-prop aircraft.

4. The Position of the Committee on an increase in wages effective May 1, 1961 until the effective date of the new Pilots' basic working agreement is the same as that stated in the January 30, 1963 proposal.

5. Same as Company February 1, 1963 proposal, Par. # 4.

February 2, 1963

* Intervenors' Exhibit 38 in Bargaining Case.

Portion of Negotiating Notes (Plaintiffs' Exhibit 107 in Bargaining Case), February 12, 1963.

Opened at 4:00 P. M. (Pilots and Flight Engineers were in private conference all day).

NJO* opened by suggesting a discussion of crew complement—referring back to Company's concern that FEIA may not go through with the deal if the Pilot committee is forced to separate from ALPA.

Whitacre indicated his desire that FEIA demonstrate their willingness to go along with the Pilots regardless of the ALPA problem.

JVM** indicated that he had no reservations about giving up representation rights—but to merge with whom? Crew complement document assumed merger with ALPA.

NJO* pointed out that the recently drafted modified crew complement document eliminates ALPA and contemplates a merger between the AA pilot committee and the FEIA—but it does not preclude ALPA signing and solving the whole problem.

NJO assured WBW*** that the FEIA would go along and that they would review the new document and advise their position.

WBW asked Manning to initial the modified CCD so that negotiations can proceed. Some discussion followed—but no direct answer to the question.

Manning stated clearly that he sees it as a timing problem. If we complete the deal and the pilots get out of ALPA and form a new organization, FEIA will join that organization—but it must be an organization.

NJO expressed surprise saying his understanding was that if a new organization became a necessity it would be formed by pilots and engineers in unison.

After additional discussion, O'Connell referred to Manning's argument to review the revised C.C.D. and advise.

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* N. J. O'Connell..... President, Allied Pilots Association
** J. V. Manning..... President, FEIA, AAL Chapter.
*** W. B. Whitacre..... Vice President—Personnel, American.

Portion of Negotiating Notes (Plaintiffs' Exhibit 108 in Bargaining Case), February 13, 1963.

JVM Crew Complement—will not be ready to discuss until P. M.

VBW Will equal TWA gross by equipment for reduced hours but no retirement—retirement to be deferred for a specified period. Suggest 3 year contract, can open in two years on retirement *or* wages, not both. This withdraws Co. former proposal of 2½% across the board plus pilot retirement.

TWA rates are approximately 90% of our copilot pay. If this no good will pay industry average.

EJM* explained details of WBW proposal.

N. J. O. expressed concern over F/E's being in a separate pension plans—looking for agreement as to when Engineers could come into pilot plan. Suggested relating it to the date of 75 hour implementation—some period thereafter.

WBW proposed—two years after signing—pick up present contribution to present plan—two years after that put them in pilot plan.

or

two years after full implementation—put them in pilot plan.

Recessed at 12:15 for lunch.

Edwards** joined group during luncheon recess.

Resumed at 2:15. Whitacre explained (in response to NJO question) that when company puts F/E's in pilot plan it does not mean picking up F/E's contracts. If we do that, we adjust percentages downward.

Nick*** countered with TWA rates plus putting F/E's into pilot plan 18 months from signing, reducing percentages (by approximately 7%) accordingly.

WBW No soap.

Edwards left at 3:15 P. M.

Schwartz joined group at 3:30 P. M.

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* E. J. Mahon ..... American Negotiating Committee.
** L. Edwards ..... Chairman, National Mediation Board.
*** N. J. O'Connell ..... President, Allied Pilots Association.

Portion of Negotiating Notes (Plaintiffs' Exhibit 108 in Bargaining Case), February 13, 1963.

Pilots F/E's asked for recess after which NJO proposed 1/1/66 as date of putting F/E's in pilot plan with suitable reduction in rate.

WBW agreed to consider.

Collective Bargaining Agreement of July 9, 1963 between American Airlines, Inc. and Allied Pilots Association (submitted at request of District Court in Docket No. 28473).

(Opposite ☞)

AGREEMENT

between

AMERICAN AIRLINES, INC.

and

THE AIR LINE PILOTS

in the service of

AMERICAN AIRLINES, INC.

as represented by

ALLIED PILOTS ASSOCIATION

Effective: July 9, 1963

AGREEMENT

between

AMERICAN AIRLINES, INC.

and

THE AIR LINE PILOTS

in the service of

AMERICAN AIRLINES, INC.

as represented by

ALLIED PILOTS ASSOCIATION

Effective: July 9, 1963

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AGREEMENT

between

AMERICAN AIRLINES, INC.

and

THE AIR LINE PILOTS

in the service of

AMERICAN AIRLINES, INC.

as represented by the

ALLIED PILOTS ASSOCIATION

EFFECTIVE: July 9, 1963

THIS AGREEMENT is made and entered into in accordance with the provisions of the Railway Labor Act, as amended, by and between AMERICAN AIRLINES, INC., hereinafter known as the "Company," and the air line pilots in the service of AMERICAN AIRLINES, INC., as represented by the ALLIED PILOTS ASSOCIATION, hereinafter known as the "Association".

In making this Agreement the parties hereto recognize that compliance with the terms of the Agreement and the development of a spirit of cooperation is essential for mutual benefit and for the intent and purpose of this Agreement.

It is hereby mutually agreed:

SECTION 1
RECOGNITION

The Association has shown satisfactory proof to the Company of the fact that it represents more than a majority of the air line pilots of the Company.

SECTION 2
DEFINITIONS

A. Pilot

"Pilot" shall include and mean Bid First Pilot, First Pilot, Reserve First Pilot, ATPC Pilot, Bid Copilot, Copilot, Reserve Copilot and Non-Bid Pilot.

B. Bid First Pilot

"Bid First Pilot" means a pilot who is in command of the aircraft and is responsible for the manipulation of, or who manipulates the flight controls of an aircraft while under way, including takeoff and landing of such aircraft, and who is properly qualified to serve as, and holds a currently effective airman's certificate authorizing him to serve as such pilot and who holds First Pilot bid status.

C. First Pilot

"First Pilot" means a pilot who is in command of the aircraft and is responsible for the manipulation of, or who manipulates the flight controls of an aircraft while under way, including takeoff and landing of such aircraft, and who is properly qualified to serve as, and holds a currently effective airman's certificate authorizing him to serve as such pilot and who holds Copilot bid status and who has been awarded a regularly scheduled monthly sequence of trips.

D. Reserve First Pilot

"Reserve First Pilot" means a pilot who has been checked out and is currently designated as such by the Company, and who is responsible for the manipulation of, or who manipulates the flight controls of an aircraft while under way, including takeoff and landing of such aircraft, and who is properly qualified to serve as, and holds a currently effective airman's certificate authorizing him to serve as a first pilot.

E. ATPC Pilot

"ATPC Pilot" (Airline Transport Pilot Certificate) for the purposes of this Agreement means a copilot who has received the certificates and ratings necessary for advancement to the status of Reserve First Pilot.

F. Bid Copilot

"Bid Copilot" means a pilot who is second in command of the aircraft and any part of whose duty is to assist or relieve the first pilot in the manipulation of the flight controls of the aircraft while under way, including takeoff and landing of such aircraft, and who is properly qualified to serve as, and holds a currently effective airman's certificate authorizing him to serve as such copilot and who holds Copilot bid status.

G. Copilot

"Copilot" means a pilot who is second in command of the aircraft and any part of whose duty is to assist or relieve the first pilot in the manipulation of the flight controls of the aircraft while under way, including takeoff and landing of such aircraft, and who is properly qualified to serve as, and holds a currently effective airman's certificate authorizing him to serve as such copilot and who has been awarded a regularly scheduled monthly sequence of trips.

H. Reserve Copilot

"Reserve Copilot" means a copilot as defined in this Section, who has not been awarded a regularly scheduled sequence of trips.

I. Bid Pilot

"Bid Pilot" means a pilot who holds bid status at a particular base station as the result of filling a pilot bid vacancy as determined in

accordance with Section 23 of this Agreement. Such bid pilot may be referred to as a "bidholder" or "bidholding pilot".

J. Non-Bid Pilot

"Non-Bid Pilot" means a pilot who does not hold bid status.

K. Designations

For the purposes of this Agreement, the term "first pilot" or "all first pilots" means and includes Bid First Pilots, First Pilots and Reserve First Pilots. The term "copilot" or "all copilots" means and includes Bid Copilots and Reserve Copilots. The term "Reserve Pilot" means and includes Reserve First Pilot and Reserve Copilot.

L. Day Flying — Night Flying

"Day Flying" shall include all flying between the hours of 0600 and 1800 Local Time and "Night Flying" shall include all flying between the hours of 1800 and 0600 Local Time.

M. Calendar Month

"Calendar Month", as used herein, shall mean the period from the first day of, to and including the last day of each calendar month of the year, except that for pilot scheduling and pay purposes, January, February and March will each be considered a thirty (30) day month through the addition of January 31 and March 1 to the month of February. Leap year will make February a thirty-one (31) day month.

N. Pay or Compensation

"Pay" or "Compensation", for the purposes of this Agreement, means longevity, hourly, gross weight and mileage pay.

O. Schedule

"Schedule" means the operating schedule used by the Company in its operations.

P Service

"Service" means the period of time assigned to active duty as a flight deck operating crew member or supervisor with the Company.

Q. Reinstatement Rights Holder

"Reinstatement Rights Holder" means a pilot who holds a prior right to reinstatement to a base station and status under the terms of this Agreement.

R. Furlough

"Furlough" means the removal of a pilot from active duty as a pilot with the Company without prejudice, due to a reduction in force, or the period of time during which such pilot is not in the active employ of the Company as a pilot due to such reduction in force.

S. Co-terminals as used in this Agreement shall mean:

1. Idlewild/Newark/LaGuardia
2. Midway/O'Hare
3. Fort Worth/Dallas
4. Los Angeles/Ontario
5. San Francisco/Oakland
6. Washington/Dulles International

SECTION 3
LONGEVITY PAY

All first pilots shall receive longevity pay (salary where indicated) in accordance with total accredited service with the Company as a pilot

(including first pilot, reserve pilot and copilot) as follows:

1st year	*$500.00 per month
2nd year	2.79 per hour
3rd year	2.99 per hour
4th year	3.18 per hour
5th year	3.38 per hour
6th year	3.57 per hour
7th year	3.77 per hour
8th year	3.96 per hour
9th year	4.16 per hour
10th year and thereafter	4.35 per hour

*Salary. All other figures are longevity pay.

SECTION 4
FLYING PAY — FIRST PILOTS

In addition to longevity pay, all first pilots shall receive flying pay set forth below:

Hourly Pay:

Aircraft Pegged Speed	Hourly Pay Day	Night
UTBNI 275 MPH	$7.35	$ 9.85
275 " 300 MPH	7.60	10.10
300 " 325 MPH	7.85	10.35
325 " 350 MPH	8.10	10.60
350 " 375 MPH	8.35	10.85
375 " 400 MPH	8.60	11.10
400 " 425 MPH	8.85	11.35
425 " 450 MPH	9.10	11.60
450 " 475 MPH	9.35	11.85
475 " 500 MPH	9.60	12.10
500 " 525 MPH	9.85	12.35
525 and over	10.10	12.60

Mileage Pay:

All first pilots shall be paid 2.2 cents per mile for each mile flown.

Gross Weight Pay:

All first pilots shall receive gross weight pay at the rate of 2 cents per thousand pounds of gross weight of the airplane flown for each hour flown.

SECTION 5

Pay — COPILOTS

Each copilot who has completed one year of service with the Company as a pilot shall be paid at a rate based on a percentage of first pilot pay for the same year of service as follows:

Year in which serving	Percentage of comparable year First Pilot Pay
Second	50%
Third	60%
Fourth	61%
Fifth	62%
Sixth	63%
Seventh	64%
Eighth	65%
Ninth	66%
Tenth Year and thereafter	67%

First Year Copilots shall be paid a salary of $500 per month.

SECTION 6
PAY — RESERVE FIRST PILOTS

Reserve first pilots shall receive first pilot rates when serving as first pilots or when serving as copilot.

SECTION 7
MINIMUM GUARANTEES

A. A pilot who holds a trip selection award other than a pilot with less than one (1) year of service with the Company, shall receive as a minimum guarantee for each full calendar month of service compensation equal to 80% of the applicable monthly maximum, at half-day, half-night rates as set forth in this Agreement for the equipment in such trip selection award.

B. A pilot who is awarded a reserve flying assignment other than a pilot with less than one (1) year of service with the Company, shall receive as a minimum guarantee for each full calendar month of service compensation equal to 85% of the applicable monthly maximum, at half-day, half-night rates as set forth in this Agreement for the equipment in such reserve flying assignment.

C. When a pilot flies or is scheduled to fly more than one (1) type of equipment or does no flying during a calendar month, his monthly guarantee shall be prorated on the basis of the ratio of the hours flown on each type of equipment to the total flown in the month, except that in no event shall his guarantee be less than the appropriate guarantee based on the highest paying type of equipment involved in his original trip selection award or original reserve flying assignment.

D. All monthly guarantees shall be prorated on a daily basis when a pilot changes his pay status during the calendar month. Actual earnings or the prorated guarantee in effect at the time such earnings accrue, whichever is greater, shall be paid. In no event shall a Reserve First Pilot receive less than $1,000 in a calendar month.

Example of Reserve First Pilot Guarantee:

CONDITIONS: Tenth year pilot serves from April 1 through April 25 as L-188 copilot, logging 64 day hours, 40 of which are credited in the first 15 days. Effective April 26 he is designated a Reserve First Pilot in the DC-6 equipment subdivision, thereafter is credited with 8 hours, half-day, half-night.

EXPLANATION AND COMPUTATION: Guarantee for the first 15 days is as copilot, last 15 days as first pilot, each prorated on the basis of the monthly distribution of flight time by equipment — 88.89% (64/72) in L-188, 11.11% (8/72) in DC-6. Earnings for each period are compared against the prorated guarantee and the greater amount paid.

APRIL 1 THROUGH 15

	Actual Earnings	Prorated Guarantee	Greater Amount
40 day hours, L-188 copilot hourly rate = 40 x $15.4234	616.94		
88.89% of regular copilot L-188 15 day guarantee = 88.89 x $520.35		462.54	
11.11% of regular copilot DC-6 15 day guarantee = 11.11 x $446.38		49.59	
		512.13	616.94

APRIL 16 THROUGH 30

	Actual Earnings	Prorated Guarantee	Greater Amount
24 day hours, L-188 copilot hourly rate = 24 x $15.4234	370.16		
8 hours, ½D, ½N, DC-6 first pilot hourly rate = 8 x $20.82	166.56		
	536.72		
88.89% of reserve first pilot L-188 15 day guarantee = 88.89 x $825.18		733.50	
11.11% of reserve first pilot DC-6 15 day guarantee = 11.11 x $707.88		78.65	
		812.15	812.15
TOTALS	1,153.66	1,324.28	1,429.09

Pilot's pay for the month is $1,429.09

E. When a pilot who is awarded a reserve flying assignment is assigned by the Company to fly equipment on which the rates of pay are less than the rate of pay of the lowest paying equipment involved in such pilot's original reserve flying assignment, such pilot shall be paid for such flying at rates based on the lowest paying equipment involved in his original reserve flying assignment. For the purposes of paragraph D above, all hours flown by such pilot in his equipment subdivision or a lower paying equipment subdivision will be considered to have been flown

in the highest paying equipment in his original reserve flying assignment.

F. Notwithstanding the provisions of paragraph A of this Section, when the Company introduces new equipment of a type not previously operated by the Company, for the first twelve (12) calendar months of scheduled service of such new equipment type, a pilot who holds a regular trip selection on such new equipment type, other than a pilot in his first year of service, shall receive as a minimum guarantee for each full calendar month of service compensation equal to 85% of the applicable monthly maximum at half-day, half-night rates, and for the same period such pilot shall be paid and credited, on a scheduled basis, for any regularly scheduled trip from which he must be removed because of the substitution of an equipment type on which he does not hold qualification.

G. When a copilot is designated as a Reserve First Pilot or First Pilot during a calendar month, he shall retain that designation from the date of designation to the end of the calendar month (and his First Pilot guarantee shall be for a period of not less than fifteen (15 days) provided that a First Pilot or Reserve First Pilot who is scheduled to fly a trip or trip sequence originating in the prior month and terminating on the first day of the succeeding calendar month and who flies such schedule into the first day of the succeeding calendar month in which he has been awarded copiiot flying only, will not be considered to be designated as a Reserve First Pilot for such succeeding month on the basis of being scheduled to fly into the first day. For his First Pilot flying on his first day of the month, such pilot will receive pay for either the First Pilot flying performed or 1/30 of the applicable First

Pilot guarantee on the equipment he flew, whichever is greater. If such pilot is delayed on the scheduled flight and actually flies beyond the first calendar day, he will not be designated as a Reserve First Pilot for the month except that for pay purposes his pay guarantee only will be computed as though he was so designated on the first calendar day of the month. If such pilot is scheduled to fly or rescheduled to fly beyond the first calendar day of the month as described in this paragraph, he will be designated as a Reserve First Pilot for the month.

H. When a pilot is moved from the propeller equipment division to the jet equipment division in accordance with Section 24-C-4 of this Agreement, he shall receive, as a minimum guarantee, compensation equal to 85% of the applicable monthly maximum at half-day, half-night rates based on the highest paying jet equipment in the subdivision to which he is assigned.

SECTION 8
PAY AND CREDIT — PILOT RELIEVED OF FLYING DUTIES

A. Pay — General

The pay provisions of this Section shall apply to a pilot who is relieved of his regular flying duties for any of the following reasons:

1. Sick leave not in excess of accrued sick leave as provided in Section 14 of this Agreement.

2. To engage in a training program other than training on a regular day off.

3. For vacation and for the duty-free forty-eight (48) hour period preceding the selected portion of such vacation.

4. To serve as a juror in response to official summons.

B. Pay — Regular Scheduled Pilot

A pilot who holds a trip selection award, other than a pilot in his first year of service, and who is relieved of his regular flying duties as set forth in paragraph A of this Section shall receive pay, on the basis of scheduled flight time plus applicable credits as provided under Sections 21 E and 21 F of this Agreement, for the trips he was scheduled to fly as a result of his trip selection. In no case shall such pilot receive less than the proportionate part of his minimum guarantee prorated on a daily basis as provided in this Agreement.

C. Pay — Reserve Pilot

A pilot who does not hold a trip selection award, other than a pilot in his first year of service, and who is relieved of his regular flying duties as set forth in paragraph A of this Section, shall receive pay on the basis of a daily rate determined in accordance with the following:

1. If he is relieved of his regular flying duties for twenty (20) days or less during a calendar month, such daily rate shall be equal to his actual earned pay during such month divided by the number of days he was available during such month. In this instance, days available includes all days except those involved in the period of relief from flying duties as set forth in paragraph A of this Section.

2. If he is relieved of his regular flying duties for twenty-one (21) days or more during a calendar month, such daily rate shall be based on the highest daily rate, determined in accordance with (1) above, for any of the three

(3) preceding calendar months.

In no event may such pilot's total monthly earnings be less than eighty-five percent (85%) nor more than one-hundred percent (100%) of his applicable monthly maximum at half-day, half-night rates based on a full calendar month of service.

D. Pay — First Year Pilot

A pilot in his first year of service shall continue to receive his flat salary when relieved of his regular flying duties as set forth in paragraph A of this Section.

E. Credit — Regular Scheduled Pilot

For purposes of flight time limitations, a pilot who holds a trip selection award and who is relieved of his regular flying duties as set forth in paragraph A of this Section, or who is on unpaid leave of absence, shall be credited with the scheduled flight time plus applicable credits as provided under Sections 21 E and 21 F of this Agreement, for the trips he was scheduled to fly as a result of his trip selection.

F. Credit — Reserve Pilot

For purposes of flight time limitations, a pilot who does not hold a trip selection award and who is relieved of his regular flying duties as set forth in paragraph A of this Section, or who is on unpaid leave of absence, shall be credited with one-thirtieth (1/30) of his applicable monthly maximum for each calendar day of the period of relief from flying duties. In a thirty-one (31) day month other than January or March, such pilot shall receive no flight time credit for the first twenty-four (24) hours of the first duty-free period which falls in the period of relief from schedule.

G. Jury Duty Pay

A pilot who is paid for jury duty in accordance with the provisions of this Section will have deducted from such pay the amount of remuneration he received for his service as a juror.

SECTION 9
COMPUTATION OF FLYING PAY

A. Determination of Hours

1. In determining the hours flown by pilots for pay purposes the actual time from block to block and time credited for pay purposes as specified elsewhere in this Agreement shall be used; provided that on each leg of a flight where scheduled times have been established the pilot shall be paid for no less than such scheduled time. The respective hourly pay brackets shall be determined in accordance with the speeds of aircraft established in paragraph B of this Section.

2. In computing the pay for night flying, the actual night hours shall be used as defined in Section 2, paragraph L, of this Agreement and when changes in local time occur during the flight, the local time at the station of last departure shall be used in computing the day and night flying time for that leg of the flight; provided that on each leg of a flight where scheduled times have been established the pilot shall be paid for no less than such scheduled time.

3. When the scheduled block to block time is found in actual operation to be improper, conferences shall be held at the request of the pilot representatives for the purpose of establishing proper scheduled times to be used for pay purposes.

B. Determination of Speeds and Mileage

1. The speeds of aircraft now in service or to be in service during the life of this Agreement shall be established for hourly and mileage pay purposes as follows:

	Hourly Pay	Mileage Pay
DC-6 Type	275 MPH	260 MPH
DC-7 Type	325 MPH	310 MPH
Electra L-188	375 MPH	355 MPH
Boeing 727	520 MPM	530 MPH
Boeing 707-323C	545 MPH	545 MPH
Boeing 707-720B	545 MPH	545 MPH
Boeing 707-123B	545 MPH	545 MPH
Convair 990	545 MPH	545 MPH

Convair 240 aircraft will be paid at DC-6 rates.

2. The mileage to be used for mileage pay computation shall be determined by multiplying the speeds for the type aircraft flown as specified herein by the total number of hours flown and credited, as specified in paragraph A of this Section.

3. When the Company introduces aircraft other than those specified in this Section, or modifies current aircraft or their operation in such a manner as to vary an established speed five (5) or more miles per hour over the established speeds specified herein, a speed shall be determined for such new or modified aircraft in the following manner:

a. An optimum air speed will be determined from the manufacturer's performance charts by assuming that the aircraft in question is loaded to maximum certificated gross weight for takeoff and takeoff made from sea level under standard conditions. Climb will be made to high blower optimum altitude using

the Company's established power control procedures. At optimum altitude and at the gross weight of the aircraft at that time, a true air speed will be fixed at scheduled operation cruising power, high blower, standard conditions for the altitude.

b. A ratio shall be established on the most comparable type of aircraft presently in operation, between the established speed of such aircraft, as specified in this Section, and the true airspeed of that aircraft at optimum altitude under the conditions set forth in subparagraph "a" above.

c. This ratio shall be applied to the true airspeed at optimum altitude of the new or modified aircraft and the figure resulting from the application of such ratio, rounded to the nearest five (5) miles per hour, shall then be the established speed for pay purposes of such new or modified aircraft.

d. These procedures shall not apply when the established speed of new or modified aircraft results in a figure greater than 599 miles per hour.

C. Determination of Gross Weight

The gross weight of an aircraft shall be the maximum certificated gross weight rounded to the nearest 1,000 lbs.

D. General

When a change in calendar month occurs enroute, such occurrence shall be indicated in the aircraft log book and pay and credit for the time flown before midnight shall be paid and credited to the month in which the pilot involved originated the flight. Midnight shall be determined on the basis of Local Time at the point of last takeoff.

SECTION 10
MISCELLANEOUS FLYING

A. Miscellaneous Flying

Pilots shall receive applicable pay in accordance with the pay differentials outlined in this Agreement on scheduled and extra section flights, and for the following non-scheduled flights: publicity, charter, contract, scenic, attempts, courtesy flights, ferries, engine, instrument, plane and radio test flights, experimental and airway aid test flights.

B. Pilots Serving in Lower Categories

When a first pilot or reserve first pilot is assigned by the Company to serve as copilot on any flight stipulated in paragraph A of this Section he shall receive first pilot rates of pay. Any regularly scheduled copilot displaced from his regular trip by such first pilot or reserve first pilot shall receive flight time pay and flight time credit on a scheduled basis for the trip or trip pairing from which he was displaced.

C. Supervisory Flying

1. When any supervisory or engineering pilot flies any flight producing revenue, the Company shall credit and pay full compensation at regular rates for such flight to the pilot or pilots who were available and who should have flown such flight. Such pilot or pilots shall post the flight time for which they were credited and paid and shall be afforded relief from duty, in the same manner and to the same extent as though they had actually flown such flight. All such flying shall be recorded with the name of the supervisor, the name of the pilot replaced, the trip number and the flying time, and two copies of such listing shall be

forwarded to the Local Domicile Chairman by the 15th day of the following month.

2. Regular supervisory flight personnel may return to line flying on a temporary basis for periods not to exceed one month in each calendar quarter of a calendar year. The Local Domicile Chairman shall be advised, in writing, of the names of such personnel prior to their return to line flying.

a. The trips flown by such supervisory personnel shall, irrespective of any other provisions of this Agreement, be selected on the basis of their own seniority or the seniority of the pilot who is to serve as their replacement during such month, whichever is the lesser.

b. For purposes of this Agreement, regular supervisory flight personnel returning temporarily to line flying shall not be deemed to be "returning to active line flying".

c. The Company will replace such supervisory pilots returning temporarily to line flying with an equal number of regular line pilots from that base station. The Local Domicile Chairman shall be advised, in writing, of the names of the line pilots replacing supervisors thirty (30) days prior to the supervisors' return to line flying.

d. Supervisory pilots returning temporarily to line flying shall, during the calendar year, alternate on the routes and equipment flown from their base station.

e. Such supervisory pilot may give up any of his regularly assigned trips, and no other supervisory pilot may relieve another supervisory pilot on temporary line flying

duty of such trip. Any trip not flown by the supervisory pilot shall be deemed to be open flying and no supervisory pilot shall be entitled to make up flying time or do any reserve flying during that month.

D. Training Pay

1. When a pilot is engaged in a training program requiring that he be relieved of his regular flying duties, he shall be paid and credited in accordance with Section 8 of this Agreement.

2. When a pilot is requested by the Company to fly an aircraft on which lesser rates of compensation are paid in order to qualify for promotion under Section 23, paragraph B.1. or Section 24, paragraph D.1., or when he is requested to accept additional equipment qualifications, he shall receive either his applicable minimum pay guarantee prorated for each day assigned to such flying, or pay for each scheduled trip on which the pilot holds a trip selection and which was missed, whichever aggregate pay is higher for that month. In the event that his actual hours multiplied by applicable rates in the lower paying equipment produces higher compensation than the trips missed on the higher paying equipment, such higher compensation shall be paid.

3. Pilots shall not receive longevity, hourly, mileage, gross weight or deadhead pay for route checks, practice flights, training flights or check flights, other than those specified in this Section. However, when a proficiency check flight is interrupted while in progress, due to the necessity to return the aircraft to the departure station or a co-terminal at the direction of Flight Dispatch, the pilot who is

required to complete such proficiency check at a later date will be paid but not credited two (2) hours at half-day, half-night rates for the interrupted proficiency check flight. Such pay shall be based on the equipment type involved in the interrupted check flight and is not subject to the applicable monthly maximum as set forth in Sections 8 C, 21 A and 24 F of this Agreement.

4. When a pilot is assigned to required ground school training which does not result in such pilot being removed from a regularly scheduled trip, such pilot shall be paid but not credited 2.50 or 2.67 hours (as applicable in accordance with his monthly maximum) at one-half day, one-half night rates based upon his equipment type monthly guarantee, for each day he was assigned to such ground school training and such pay shall not be subject to the applicable monthly maximum as set forth in Sections 8 C, 21 A and 24 F of this Agreement. Link trainer is not to be considered ground school training.

5. Flight Simulators

The provisions of all sub-paragraphs of this paragraph apply to Company required training in an electronic Flight Simulator, including proficiency checks in the Flight Simulator, ground school in connection therewith, but exclusive of transition training, upgrading and refresher training, covered in a continuous training program.

a. When a regularly scheduled pilot is removed from a trip(s) and assigned to flight simulator training, such pilot shall receive pay and flight time credit on the basis of the trips he was scheduled to fly as a result of his trip selection.

b. When any pilot is assigned to flight simulator training which does not result in such pilot being removed from a regularly scheduled trip(s), such pilot shall have one additional day of vacation added to his following year's vacation period for each day he was assigned to flight simulator training.

Example:

Scheduled vacation due—Section 13 (Dec. 1 thru Dec. 14) ..... 14 days

Flight Simulator days credit due—two (2) days. December 15th and 16th following scheduled vacation are scheduled days off. Such days shall be credited towards the two (2) days of flight simulator days credit due ..... 2 days

16 days

Same as above, except December 15th and 16th are scheduled for flying. Pilot is relieved from trips on the 15th and 16th, is paid and credited, and receives two (2) days due.

Same as first example, except December 15th is a scheduled day off and December 16th is the originating date of a trip pairing to be flown the 16th and returning the 17th. The pilot is removed from the trip pairing originating on the 16th and is paid and credited for the missed sequence of the 16th and 17th.

c. For purposes of subparagraph b. above, a flight simulator day's vacation credit shall consist of the following:

(1) Any portion of a calendar day deadheading to or from the flight simu-

lator, as indicated in the authorization contained in d. (5).

(2) Any portion of a calendar day spent in flight simulator training, including proficiency checks in the flight simulator or ground school in connection therewith.

(3) Any portion of a calendar day the pilot is available for flight simulator training at the location but he is unable to complete such training because the flight simulator is inoperative or because of the cancellation or postponement of ground school or because of the cancellation of any portion of scheduled flight simulator training.

d. General Rules

(1) Simulator training periods shall not normally exceed four (4) hours per day. (Actually connected with the simulator.).

(2) Pilots will receive at least five (5) days advance notice of simulator training except that this period may be shortened if the pilot consents.

(3) All pilots will be shown a copy of the report prepared on Simulator Training.

(4) If a pilot's performance on a proficiency check in a flight simulator is considered unsatisfactory, he shall not be prejudiced thereby, and shall have the opportunity of demonstrating his proficiency in an aircraft of the type he is currently flying. Proficiency check in an aircraft shall not be considered flight simulator training.

(5) Priority transportation will be provided over the Company's lines on trips designated by the Company.

(6) Flight Simulator time shall not be considered as flight time for any purpose. Assignment to Company required flight simulator training shall be considered time on duty only for purposes set forth in Section 21 C of this Agreement.

(7) The Link trainer is not included in the provisions of paragraph D 4 and related subparagraphs.

E. Deadhead Pay

When a pilot deadheads to or from any station for the purpose of covering any of the flights specified in paragraph A of this Section, he shall be paid and credited for such deadheading at one-half hour pay and flight time credit for each hour of such deadhead time on the type equipment covered on the basis of the scheduled flight time of the trip on which he deadheads and at first pilot or copilot rates, according to the capacity in which he serves. Deadheading at pilot's request will not be paid under this paragraph.

The above provisions covering air transportation shall apply when deadheading is by surface transportation and made in lieu of air transportation as though the deadheading were performed by air transportation. This shall not apply between co-terminals served by the same pilot base.

SECTION 11
EXPENSES AWAY FROM BASE

When pilots are away from their base stations on regular or special duty, they shall receive expenses as follows:

A. Lodging

1. Pilots when at their regular layover station shall be furnished suitable single room lodging in a suitable location.

2. Pilots when at other than their regular layover station shall receive reasonable actual expenses for lodging consistent with the lodging conditions encountered.

B. Meals

1. Pilots in flight or when away from their base station on regular assignment shall be reimbursed for meals at the following rates:

Meal	Rate	Local Time
Breakfast	$1.40	0600 to 0800
Lunch	1.65	1100 to 1300
Dinner	3.50	1700 to 1900

In addition to the above, pilots in flight shall receive a midnight meal allowance:

Midnight Meal	$1.50	2300 to 0100

There shall be added to the above meal allowance rates, ten (10) percent for tips.

2. No reimbursement shall be made for meals when regular meals are available to the pilot without charge, provided that between-meal snacks or comparable parts of meals shall, for the purpose of this Section, not be considered as regular meals.

C. Transportation

1. At points other than a pilot's base station, where ground transportation is not made available by the Company, pilots shall be allowed actual necessary expenses incurred for transportation between the airport and the hotel of regular lodging.

2. Pilots traveling under Company orders shall be furnished Company passes for the trip or reimbursement for actual transportation expense should it be necessary to use transportation other than Company aircraft.

D. General

Expenses incurred when on special duty, temporary assignment, or at other than regular layover stations shall be in accordance with Company regulations and with Company approval.

SECTION 12
MOVING EXPENSES

A. Basic Moving Expenses

1. When a pilot is moved by the Company at Company expense, the Company shall engage and compensate a reputable bonded furniture moving company with suitable equipment to move the normal personal and household effects of such pilot up to a maximum of eight thousand (8,000) pounds. Such expense shall include packing, unpacking, shipping, a maximum of $8,000 of insurance, drayage and storage of household effects for a period not to exceed sixty (60) days. When automobile transportation is used for the pilot and his immediate family, the Company shall pay mileage travel allowance for one car at six (6) cents per mile (two cars if the pilot owns two cars, at six (6) cents per mile each) for the most direct AAA mileage from point of origination to point of destination, plus toll fees in transit. While enroute the Company will allow expenses for hotel accommodations for a pilot and the dependent members of his immediate

family which shall not exceed $7.50 per day for the pilot plus $3.50 for each dependent over twelve (12) years of age and $1.00 for each dependent under twelve (12) years of age. Meals shall be allowed for the pilot and dependents over twelve (12) years of age at the rates provided in Section 11 B of this Agreement plus an additional $2.00 per day for each dependent under twelve (12) years of age.

2. In addition, pilots will be entitled to Direct Moving Expenses as set forth in AA Regulations Section 20-9 dated July 31, 1962, which shall not be made less favorable during the term of this Agreement.

3. All moving expenses shall be claimed on appropriate Company expense forms and, except for meals and automobile mileage, will be supported by receipts and shall be submitted within thirty (30) days after incurring the expense. In the event that the Company Regulations provide more liberal hotel and meal expenses than those provided in this paragraph, the greater amounts shall be allowed.

B. Moves at Company Expense

1. Assignment or transfer by Company direction.

2. Bid Pilot displacing most junior Bid Pilot in his status (Bid First Pilot or Bid Co-pilot) on the system.

3. A pilot transferring from a base station as provided in Section 25, paragraph D, sub-paragraph 3.a.

4. Bid Pilots transferring from a closed base station as provided in Section 25, paragraph E (one-half of expenses).

C. Moves at Pilot Expense

All other moving expenses shall be borne by the pilot except as provided by Company regulations and policies.

SECTION 13
VACATIONS

A. Vacation Period

Pilots shall become entitled to and receive vacation allowances with pay in accordance with the following:

1. As used herein the term year is used to mean a calendar year.

2. A pilot who, as of December 31 of any year, has had less than one (1) year of accredited service with the Company will be entitled to a vacation on the basis of one and one-sixth (1-1/6) days for each month of service.

3. As of December 31 of each year, a pilot who has had one (1) year or more of accredited service with the Company will be entitled to a vacation of two (2) weeks.

4. As of December 31 of each year, a pilot who has had ten (10) years or more of accredited service with the Company will be entitled to a vacation of three (3) weeks.

5. As of December 31 of each year a pilot who has had twenty (20) years or more of accredited service with the Company will be entitled to a vacation of twenty-six (26) days. During the calendar year in which a pilot attains twenty (20) years of service with the

Company he will be eligible for vacation in accordance with the following schedule:

20 YEARS ACCREDITED SERVICE COMPLETED BETWEEN	VACATION IN THAT CALENDAR YEAR
Jan. 1 and Feb. 28	26 Calendar Days
March 1 and April 30	25 Calendar Days
May 1 and June 30	24 Calendar Days
July 1 and August 31	23 Calendar Days
Sept. 1 and Oct. 31	22 Calendar Days
Nov. 1 and Dec. 31	21 Calendar Days

6. For purposes of computing the number of days of vacation due, fifteen (15) days or more of service in a calendar month shall be considered a full month and less than fifteen (15) days shall not be considered. Fractions of a day's vacation which equal or exceed one-half (½) shall be considered a full day, and other fractions shall not be considered.

7. A pilot shall have a minimum of forty-eight (48) consecutive hours free from all duty with the Company before he begins any vacation period.

B. Vacation Notice

1. The Company shall, on the fifteenth day of November of each year, solicit vacation period preferences for the succeeding year. A pilot shall be permitted to select and shall be awarded in order of system seniority at his base station a vacation period proffered for selection within his equipment division in the following classifications:

FIRST PILOTS

a. Bid First Pilots

b. Pilots who during the first ten (10) months of the calendar year have been paid for six (6) months or more as a first pilot.

COPILOTS

a. Bid Copilots who during the first ten (10) months of the calendar year have been paid for less than six (6) months as a first pilot.

b. Pilots who during the first ten (10) months of the calendar year have been paid for six (6) months or more as a copilot.

2. a. (1) At each base from which jet and propeller aircraft are operated, aircraft types may be grouped into not more than two (2) divisions for vacation selection and awarding purposes.

(2) At each base from which only jet aircraft are operated, jet types may be divided into not more than two (2) divisions for the purposes of improving available vacation selections.

b. A pilot shall select and be awarded a vacation in the higher paying equipment division at his base if he has selected and been awarded a flying assignment on equipment included in such division in six (6) or more of the preceding ten (10) months.

c. A pilot shall select and be awarded a vacation in the lower paying equipment division at his base if he has selected and been awarded a flying assignment on equipment included in the higher paying equipment division in less than six (6) of the preceding ten (10) months.

d. For purposes of this paragraph 13-B-2, a pilot who is denied a trip selection

under Section 24-E-1 of this Agreement shall be considered to have selected and been awarded such selection.

3. The Company shall, when possible, post the vacation assignments as indicated by the vacation period preferences of the pilots on the first day of December of each year, but not later than the fifteenth day of December of such year. Any pilot taking a vacation shall be given not less than thirty (30) days written notice in advance of the beginning date of his vacation, provided that during the months of January, February and March of any year, the Company shall give as much prior notice of vacation as is practicable, and such notice shal be not less than fifteen (15) days. When a vacation period is assigned it will not be changed except in cases of unforseeable emergency. When a pilot's vacation period is changed in accordance with the provisions of this paragraph, he shall be permitted to make a selection of another vacation period from the periods of time available within the same calendar year.

4. A pilot will be permitted to select only one vacation period during a calendar year based on seniority. A pilot eligible for more than two (2) weeks' vacation and who desires to split his vacation (no more than two parts in any calendar year) is entitled to only one selection for his split vacation periods, based upon his seniority. The remaining portion of the split vacation not selected must be taken from the remaining periods when the Company's opeations will permit. A pilot is not entitled to pay for trips missed during the forty-eight (48) hour period prior to taking the unselected portion of a split vacation.

C. Deferred Vacations

Vacations shall not be cumulative and a vacation to which a pilot becomes entitled on December 31 of any year shall be forfeited unless taken during the folowing year; provided that a pilot may be requested by the Company to forego his vacation if such request is in writing, and in such event, if the pilot has not received his vacation by the end of the year in which it is to be taken, he shall be entitled to said deferred vacation during the succeeding calendar year.

D. Effect of Leaves on Vacations

A pilot who takes a leave or leaves of absence which exceeds, or the total of which exceeds, sixty (60) calendar days during any calendar year shall have his vacation allowance to which he becomes entitled on December 31 of that year, reduced by one-tenth (1/10) for each thirty (30) days of said leave or total of such leaves is in excess of sixty (60) days. No deductions from vacation allowances shall be made for leaves of absence granted due to injury sustained while on duty; or for leaves to represent the American Airlines pilots for grievance and collective bargaining purposes. Such grievance representatives for the purpose of this paragraph shall be System Board of Adjustment members or the representatives selected by a pilot under Section 27 D.

A pilot who has completed six (6) months' accredited service with the Company and resigns (with two weeks' written notice), or is granted Military Leave of Absence, or is furloughed by the Company due to reduction in force shall receive pay at his applicable rate as of such date for all vacation accrued and unused

to the date of resignation, Military Leaves, or furlough. All vacations accrued since December 31 shall be paid on the basis of one and one-sixth (1-1/6) days for each month of service for those entitled to two (2) weeks' vacation under this Section, one and three-fourths (1¾) days for each month of service for those entitled to three (3) weeks' vacation, and two and one-sixth (2-1/6) days for each month of service for those entitled to a twenty-six (26) day vacation.

F. Recall From Furlough

A pilot furloughed and recalled to work shall accrue vacation allowance from the date of re-employment, and to be taken during the succeeding year on the basis of one and one-sixth (1-1/6) days for each month of service if he has less than ten (10) years of accredited service with the Company, one and three-fourths (1¾) days for each month of service if he has more than ten (10) but less than twenty (20) years of accredited service with the Company and two and one-sixth (2-1/6) days for each month of service if he has more than twenty (20) years of accredited service with the Company.

G. Return From Military Leave

A pilot who returns from military leave shall accrue vacation allowance from the date of return, and to be taken during the succeeding year on the basis of one and one-sixth (1-1/6) days for each month of service if he has less than ten (10) years of accredited service with the Company, one and three-fourth (1¾) days for each month of service if he has more than ten (10) but less than twenty (20) years of accredited service with the Company and two and one-sixth (2-1/6) days for each month of

service if he has more than twenty (20) years of accredited service with the Company.

SECTION 14
SICK LEAVE

A. Accrued Leave

Any sick leave accrued prior to December 31, 1961 under the sick leave provisions then in effect and which has not been used shall be included in the accumulation provided for in paragraph C of this Section.

B. Rate of Accrual

Effective January 1, 1962, a pilot shall be credited with one and one-third (1-1/3) days of sick leave for each month of service with the Company. The accumulation for each calendar year shall be available for use the following calendar year. A pilot who has completed his first six (6) months of service may use up to eight (8) days of his accumulated sick leave in the calendar year he completes his first six (6) months' service.

C. Maximum Accrual

Unused sick leave shall be cumulative up to a maximum of one hundred twenty-six (126) days.

D. Fractions

For purposes of computing sick leave accrual under this Section, fifteen (15) days or more of service in a calendar month shall be considered a full month and less than fifteen (15) days shall not be considered. If sick leave balance results in fractional days, one-half (½) day or more will be considered a full day.

E. Beginning and Termination

1. A pilot who holds a trip selection award will be charged a day of sick leave for each day of scheduled flying which he fails to perform as a result of illness or injury, and for which he receives pay in accordance with Section 8 of this Agreement.

2. A pilot who does not hold a trip selection award will be charged a day of sick leave for each day he is unavailable for duty on account of illness or injury, continuing to but not including the date he is medically cleared for duty. Such pilot will not be charged with sick leave for duty-free periods scheduled in accordance with Section 21D of this Agreement.

F. Injury on Duty

There shall be deducted from the sick leave payment provided under Section 8 of this Agreement any Weekly Indemnity Pay under Workmen's Compensation Insurance applicable to the same period of absence. A medical certificate may be required for approval of pay for any such sick leave.

During a pilots absence due to an injury compensable under the applicable Workmen's Compensation Laws, he shall have his sick leave accrual charged for each day of such absence. In the event such absence exceeds seven (7) consecutive days, such sick leave credit used shall be restored to the pilot's accrual. This provision may be exercised only once for any one injury.

G. Credit After Furlough

A pilot laid off due to reduction in force shall have sick leave accrued prior to layoff credited to him in the event of recall.

SECTION 15
SENIORITY GENERAL

A. Service with Company and other Companies

Seniority as a pilot shall be based upon the length of service as a flight deck operating crew member with the Company or with other Companies whose operations have been taken over by the Company, except as otherwise provided in Sections 19 and 20 of this Agreement.

B. Seniority Date

Seniority shall begin to accrue from the date a pilot is first assigned to air line flying duty and shall continue to accrue during such period of duty except as provided in Sections 19 and 20 of this Agreement.

C. Retention of Seniority

A pilot once having established seniority shall not lose such seniority except as provided in Section 16 of this Agreement, nor shall his relative position on the Pilots' System Seniority List be changed, except as provided in Sections 19 and 20 of this Agreement.

D. Basic Seniority Rule

Seniority shall govern all pilots in case of promotion, demotion, their retention in case of reduction in force, their recall from furlough, their assignment or reassignment due to expansion or reduction in force or schedules, and their choice of vacancies, provided that the pilot is sufficiently qualified for the conduct of the operation to which he is to be assigned. In the event a pilot is considered not to be sufficiently qualified, the Company shall promptly furnish such pilot written reasons therefor. This paragraph shall apply, provided that certain other

rules in this Agreement stipulating specific methods and procedures of applying system seniority shall govern such application of system seniority only to the extent of the specific provisions of such rules.

E. Failure to Qualify in Turn

When a junior pilot is promoted over a senior pilot, by reason of the failure of the latter to qualify in his turn, the senior pilot shall continue to retain his position on the Pilots' System Seniority List.

SECTION 16.
LOSS OF SENIORITY

A. Resignations, Discharges

A pilot who resigns from the service of the Company, or is discharged for just cause, shall forfeit all seniority as a pilot.

B. Failure to Return From Furlough

When a pilot who has been furloughed is offered, by written notice from the Company, the opportunity to return to duty as a pilot and such pilot elects, by written statement to the Company, not to return to such duty, or if a recalled pilot fails to comply with the requirements of Section 25-H of this Agreement, his seniority right of preference in reemployment shall at that time terminate, and all his seniority as a pilot shall be forfeited.

C. Duration of Reemployment Preference

At the end of five (5) years from the date of furlough, a pilot who has not been reemployed by the Company shall forfeit all his seniority and shall not be entitled to preference in reemployment.

D. Retention of Company Benefits

Upon return from furlough a pilot shall receive all Company benefits accruing by reason of his previous active service.

SECTION 17
PILOTS' SYSTEM SENIORITY LIST

A. Seniority List supplied by Company

The Company shall provide each pilot, within thirty (30) days after July 1st of each year, a Pilots' System Seniority List effective July 1, which contains the names of all pilots arranged in the order of system seniority, whether active or inactive, and the seniority date of each pilot.

B. Protests

1. A pilot shall be permitted a period of thirty (30) days after any posting of the Pilots' System Seniority List, each year, in which to protest to the Company any omission or incorrect posting affecting his seniority.

2. A pilot on leave or away from his base station at the time of posting of the list shall have a period of thirty (30) days from the date of his return to his base station during which to file such protest.

3. Any incorrect posting or any other discrepancy which went unprotested on the annual list in which it first appeared shall not be protested on any subsequent annual posting except that typographical and clerical errors may be corrected at any time.

SECTION 18
PROBATION PERIOD

A pilot shall be on probation for a period not to exceed the first twelve (12) months of his

service as a pilot with the Company, and no pilot shall be placed on probation after the first twelve (12) months of service with the Company.

SECTION 19
LEAVES OF ABSENCE

A. General

1. When the requirements of the Company will permit, a pilot may be granted a leave of absence. When such leave is granted, a pilot shall retain and shall continue to accrue seniority, provided that during such period the pilot maintains the required certificates and ratings for his status as a pilot. When the pilot permits such certificates and ratings to lapse, his seniority shall accrue only to the date of such lapse. Seniority shall not accrue for more than twelve (12) consecutive months except for leaves of absence for sickness or injury, military service, Federal Government service, and service with the Association, provided that such period of accrual may be extended with the approval of the Company and the President of the Association. Length of service for longevity pay or salary purposes shall not accrue during leaves of absence, except leaves granted in the interest of the Company, leaves to permit attendances as representatives of the pilots at conferences with the Company, leaves granted due to sickness or injury, or for duty with the military services of the United States.

2. A pilot on leave shall not, without prior written permission of the Company, engage in aviation employment, and in no case shall engage in employment, the nature of which may bring discredit upon the Company.

B. Bid Status During Leaves

1. Any pilot granted a leave of absence shall, for a period not to exceed the first twelve (12) consecutive months of such leave, have the same bid status at his former base station upon return to active flying duty, as though he had remained on active flying duty with the Company at his base station.

2. a. When a pilot is on authorized leave for more than twelve (12) consecutive months, he shall, at the expiration of such twelve (12) months forthwith lose his bid status, and the vacancy created by the loss of such bid status shall forthwith be filled in accordance with the provisions of Section 23 of this Agreement, i.e., reinstatment rights holders shall have first preference to such vacancy, and if there are no reinstatment rights holders with reinstatement rights to that base station and status, the vacancy shall forthwith be bulletined and bid as a first step vacancy.

b. When a first pilot who held Bid First Pilot status at the beginning of such leave of absence returns to active airline flying from an authorized leave of absence exceeding twelve (12) consecutive months duration, he shall be permitted to return to his former base station in the status of a Bid Copilot with first pilot reinstatement rights to that base station, beginning on the date of loss of bid status, or, he shall be permitted the additional choice of displacing the most junior Bid First Pilot on the system, at his own expense, provided that he is senior to such first pilot.

c. When a pilot who held Bid Copilot status at the beginning of such leave of absence

returns to active airline flying from an authorized leave of absence exceeding twelve (12) consecutive months duration, he shall return to active flying duty in the status of non-bid pilot and he shall be permitted to return to his former base station provided that his seniority would have merited retention of such base station had he not gone on leave of absence. When such pilot is thereby caused to be ineligible to return to his former base station he shall be extended the same rights and privileges as those extended pilots under the provisions of Section 25 D.1. of this Agreement. If he held Bid Copilot status at the beginning of such leave of absence he shall have reinstatement rights to such bid status beginning on the date of loss of such status.

d. Reinstatment rights of any of the pilots on leave of absence shall not be exercised while such pilot is on such leave of absence. Reinstatement rights of a pilot on authorized leave of absence shall run concurrently during such leave, provided that when a pilot returns to active service with the Company, any valid remaining part of his reinstatement rights shall be in full force and effect.

C. Sickness or Injury

1. When leaves are granted on account of sickness or injury, a pilot shall retain and continue to accrue his seniority irrespective of whether or not he is able to maintain his required certificates or ratings, until he is able to return to duty or is found to be unfit for such duty, except that in no case shall leave for sickness or injury exceed a total continuous period of three (3) years. Length of service for longevity pay or salary purposes shall

accrue during leaves granted because of injury on duty, and during the first ninety (90) days of any leave granted for sickness or injury sustained off duty, provided any extension beyond three (3) years shall be by mutual consent of the Company and the Association and shall not exceed the total of an additional two (2) years.

2. A pilot returning from any leave occasioned by sickness or injury shall be permitted to return to his former base station and shall have the same status on return to active flying duty as though he had remained on active flying duty with the Company at his base station.

D. Military Service

1. A pilot ordered to, or who volunteers, for active duty with the military services of the United States in time of war shall be granted a leave of absence for the period of such duty and for ninety (90) days thereafter, during which time his seniority and length of service for pay purposes shall accrue.

2. A pilot who volunteers and is accepted for duty with the military services of the United States in time of peace shall, subject to the requirements of the Company, be granted a leave of absence for the period of such duty, but not to exceed ninety (90) days in any one (1) calendar year, during which time his seniority and length of service for pay purposes shall accrue.

3. A pilot returning from any military leave of absence shall be permitted to return to his former base station and shall have the same status on return to active flying as though he had remained on active flying duty with the Company at his base station.

E. Duty with the Association

1. When a pilot is selected or employed by the Association on a full time basis, he shall be granted a leave of absence for the duration of such tour of duty, which shall not exceed two (2) consecutive years, provided that the number of such pilots on such leave shall not at any time exceed two (2) in number. A similar consecutive leave of the same duration shall be granted by the Company, provided such leave is agreed to by the Company and the Association, and provided further that such pilot returns to the employment of the Company as a pilot for one month prior to the beginning of such second two-year leave. When a pilot is granted any such leaves of absence, he shall continue to accrue seniority, provided that length of service for pay purposes shall not accrue during such leave. A pilot returning to active service with the Company from a full time tour of duty with the Association shall be accorded the same rights and privileges as those accorded to supervisory personnel returning to line flying as stipulated in paragraph C, Section 20 of this Agreement.

F. Physical Fitness

Any dispute arising under this Section concerning physical fitness of any pilot shall be settled in accordance with the provisions of Section 26 of this Agreement.

G. Furlough While on Leave

A pilot on leave of absence whose seniority is such that he would have been furloughed had be not been on leave of absence shall be promptly notified that his rights under the Agreement have been changed to those of a furloughed pilot. If

there is a subsequent expansion in service, such pilot, if his seniority warrants, shall again revert to leave of absence status with accompanying rights and he shall be so notified.

SECTION 20
TRANSFER TO SUPERVISORY OR OTHER DUTY

A. Retention of Seniority

A pilot transferred to supervisory or other duty with the Company shall retain and continue to accrue seniority, provided that such pilot maintains at all times his required certificate or ratings. If such pilot shall permit his required certificate or ratings to lapse, he shall retain his seniority accrued at the time of such lapse and shall have a period not to exceed one (1) year in which to regain such required certificate and ratings. If he does so regain such required certificate and ratings within one (1) year, his seniority shall recommence to accrue from the date such certificates and ratings are so regained.

B. Retention of Seniority — Sickness, Injury

When a pilot is transferred to supervisory or other duty with the Company, because of sickness or injury, or becomes sick or injured while on such supervisory or other duty with the Company, he shall retain and continue to accrue seniority during such period of sickness or injury, not to exceed three years, irrespective of whether or not he is able to maintain his required certificate or ratings, provided, any extension beyond three (3) years shall be by mutual consent of the Company and the Association and shall not exceed the total of an additional two (2) years.

C. Rights on Return to Active Line Flying

1. When a pilot engaged in supervisory duty returns to active air line flying in two (2) years or less from the time he was assigned to such supervisory duty, he shall return to his former base station and his status shall be the same as though he had remained at his base station and had not served in a supervisory capacity. When the base station at which such pilot served prior to assignment to supervisory duty has, during the period of such duty, been deactivated, or all first pilot bidholders at the former base station are senior to such returning pilot, the returning pilot shall be permitted to displace the lowest ranking pilot in his status on the system, provided he is senior to such pilot.

2. When a pilot returns to active air line flying after serving in a supervisory capacity for more than two (2) consecutive years, he shall be permitted to resume the bid status he held at the time of assignment to such duty, and to return to his former base station in accordance with the provisions of subparagraph 1 of this paragraph C, or he may displace the most junior pilot in his status, provided he is senior to such pilot, at the base station at which he last served in a supervisory capacity for more than two (2) consecutive years, provided he could have successfully bid a vacancy at that base at any date subsequent to two (2) years after he was assigned to supervisory duty at such base. This is to apply on a one supervisor for one bid vacancy basis on the basis of system seniority as between supervisors, if more than one. When, due to the deactivation of base stations, the returning pilot is unable to exercise either of these prerogatives, he may then be permitted to displace the most

junior pilot in his status at any base station on the system, provided he is senior to such pilot.

3. The Company shall make every reasonable effort to assign the pilot replacing any pilot returning from supervisory duty from the base station to which such pilot returns.

4. Irrespective of any of the provisions of this Section, a pilot returning from other duty with the Company, other than supervisory duty, or a pilot returning from any engineering flying assignment, shall be governed by the provisions of Paragraph B of Section 19 of this Agreement.

5. When a pilot is on supervisory or other duty with the Company for more than twelve (12) consecutive months, he shall, at the expiration of such twelve (12) months, forthwith lose his bid status and the vacancy created by the loss of such bid status shall forthwith be filled in accordance with the provisions of Section 23 of this Agreement. Such bid status shall be regained upon return to active flying duty in accordance with the provisions of subparagraphs 1 and 2 of this paragraph C.

D. Seniority Rights After Return

After an air line pilot engaged in supervisory or other duty has returned to air line flying duty and has filled the air line flying position to which he is hereunder entitled, he shall thereafter be governed by the same seniority provisions as apply to regular air line pilots.

E. Length of Service

Length of service for pay purposes shall accrue during assignments to supervisory or other duty.

F. Physical Fitness Disputes

Any disputes arising under this Section concerning the physical fitness of such pilot shall be settled in accordance with Section 26 of this Agreement.

G. Furlough While on Supervisory or Other Duty

A pilot transferred to supervisory or other duty with the Company whose seniority is such that he would have been furloughed had he not been transferred shall be promptly notified that his rights under the Agreement have been changed to those of a furloughed pilot. If there is a subsequent expansion in service, such pilot, if his seniority warrants, shall be removed from furlough status and his former rights restored, and he shall be so notified.

SECTION 21
HOURS OF SERVICE

A. Flight Time Limitations*

1. Eighty (80) credited hours shall constitute the monthly maximum for pilots of propeller type aircraft and seventy-five (75) credited hours shall constitute the monthly maximum for pilots of turbojet aircraft. For determining compliance with the applicable monthly maximum, schedule or actual, whichever is greater on a leg-by-leg basis (block-to-block) plus credited time as provided elsewhere in this Agreement shall be used.

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*All Sections designated with an asterisk are to be subject to separate provisions governing effective dates.

2. For purposes of compliance with the applicable monthly maximum, a pilot will be considered legal to fly his last scheduled trip or trip pairing of the month, if, prior to departure from his home base station on such last trip or trip pairing, his previous total credited flight time for the month, when added to the scheduled flight time of such last trip or trip pairing within the calendar month, including applicable credits provided under Sections 21 E or 21 F of this Agreement, produces a total which does not exceed his applicable monthly maximum. Having once embarked on such last trip or trip pairing such pilot will be considered legal to fly and complete his scheduled assignment whether or not such flying will cause him to exceed his applicable monthly maximum, provided, however, such pilot will not be rescheduled or assigned any other trip or trip pairing (except deadheading) which will cause him to exceed his applicable monthly maximum.

3. When a pilot has been on duty aloft in excess of eight (8) hours in any consecutive twenty-four (24) hours, he shall, upon completion of his assigned flight, or series of flights, be given at least sixteen (16) hours for rest before being assigned any further duty with the Company.

4. A pilot shall not be scheduled for duty aloft for more than eight (8) hours during any twenty-four (24) consecutive hours, unless he is given an intervening rest period at or before the termination of eight (8) scheduled hours of duty aloft. Such rest period shall equal twice the number of hours aloft since the last preceding rest period, and in no case shall the rest period be less than eight (8) hours.

5. No pilot shall be assigned any duty with the Company during any rest period.

6. Duty aloft includes the entire period during which a pilot is assigned as a member of an airplane crew during flight time.

7. Scheduled for duty aloft means the assignment of a pilot on the basis of the flight time established in the operations schedules rather than actual flight time.

8. Flight time is the time from the moment the airplane first moves for the purpose of flight until it comes to rest at the next point of landing (block-to-block time), provided, however, that when the captain elects to delay starting engines due to quoted takeoff delays, flight time will, at the option of the captain, be considered to begin at the time the aircraft would normally have departed.

B. Notification

1. The Company shall maintain a standard method of notifying pilots of the scheduled departure time of their trips. When the scheduled departure time is appreciably delayed, pilots shall be notified as far in advance as is practicable, consistent with the circumstances. At originating stations, every effort shall be made to promptly notify pilots of any cancellation, delay or deferment of their trips.

2. The Company shall post projected crew assignments on all regularly scheduled trips not less than five (5) days in advance of the departure of such trips, except when such postings are prevented by circumstances beyond the control of the Company. Such postings shall be made available to the pilots for initialing. During his debriefing period, a pilot shall

initial his next scheduled trip assignment and such initialing shall be deemed to be notification of such trip assignment. In any event all pilots shall be furnished with adequate notification of the departure time of their trips. A pilot on a regularly scheduled sequence of trips shall not be removed from such sequence except in cases of irregularity of scheduled operations or unforeseen contingencies, which necessitate such removal.

3. No pilot shall be required to keep the Company advised of his whereabouts on his days off, while on vacation or while on layover.

4. It shall be the responsibility of a pilot who is unable to report for duty to notify, as far in advance as possible, the controlling Manager — Flight or his designated representative of this fact, giving the reason for his inability to report for duty.

5. This Agreement contemplates that pilots shall devote their entire professional flying service to the Company, except that nothing in this Agreement shall be construed to prevent any pilot from affiliating with the Military Services of the United States.

C. On-Duty Time*

1. Monthly flying assignments offered to pilots for selection shall not contain a trip or trip pairing which involves more than twelve and one-half (12½) hours of scheduled on-duty time, as defined in C.3.a. below.

2. No pilot shall be scheduled or rescheduled to remain on duty in excess of thirteen (13) consecutive hours during any on-duty period as defined in paragraph C.3.a. of this Section and in no case shall a pilot be required to re-

main on duty in excess of fourteen (14) consecutive hours during any on-duty period as defined in paragraph C.3.b. of this Section.

3. a. A pilot's scheduled or rescheduled on-duty period shall commence one (1) hour prior to the scheduled or rescheduled departure time and shall continue until fifteen (15) minutes after the scheduled arrival time at the conclusion of his day's flight assignment. Such scheduled or rescheduled on-duty period shall run continuously unless broken by a scheduled or rescheduled rest period normally of not less than ten (10) hours. If other requirements of this Agreement necessitate a longer rest period, such provisions will govern.

b. In actual operations, an on-duty period shall commence at the required reporting time, but in any event not less than one (1) hour before departure and shall run continuously unless broken by a rest period of eight (8) hours where sleeping accommodations are provided at or near the airport; or ten (10) hours in case of relief from duty where accommodations are not provided at or near the airport. In any case, the pilot will be provided not less than eight (8) hours plus normal roundtrip travel time to the rest facility. In no case will the off-duty period be less than ten (10) hours at the pilot's home base station.

One (1) hour reporting time and fifteen (15) minutes debriefing time will be required and are to be considered a part of all on-duty periods.

c. If termination at the pilot's home base station is at a co-terminal other than his original point of departure, there shall be

added one (1) hour to the on-duty period for the purpose of allowing for the use of Company furnished transportation as set forth in Section 30 I of this Agreement. However, this hour shall not be construed to be a part of the on-duty period as specified in C.3.a. and C.3.b. above.

d. A pilot engaged in deadheading shall be deemed to be on duty, provided that the Company may approve such pilot's request to exceed fourteen (14) consecutive hours on duty for the purpose of deadheading to his home base station.

D. Off-Duty Time*

1. Each pilot shall receive not less than five (5) separate periods of forty-eight (48) consecutive hours free from all duty with the Company at his home base station during each calendar month. However, at the option of the Company, one of the said forty-eight's (48's) may be:

(a) combined with another forty-eight (48) to produce a duty-free period of ninety-six (96) consecutive hours, or

(b) split into two (2) separate duty-free periods of twenty-four (24) consecutive hours each, or

(c) split into two (2) twenty-four's (24's), each of which is combined with a forty-eight (48) to produce two (2) duty-free periods of seventy-two (72) consecutive hours, or

(d) split into two (2) twenty-four's (24's), one of which is combined with a forty-eight (48) to produce a duty free period of seventy-two (72) consecutive hours, and the other scheduled separately.

Such scheduled duty-free periods shall be pre-planned and indicated on the monthly selection sheet and shall be separated by not less than twenty-four (24) hours.

2. a. Any regular scheduled pilot may request a change in any scheduled duty-free period by giving the Company twenty-four (24) hours notice prior to the beginning of the duty-free period to be changed. The Company may change a regular scheduled pilot's scheduled duty-free period only if it is necessary for the purpose of keeping the airline in operation.

b. Any reserve pilot may change, or the Company may require him to change any scheduled duty-free period prospectively, but only in the event that such reserve pilot is scheduled to fly a trip that is scheduled to terminate at his home base station no later than 1200 Local Time on the first day of the duty-free period involved. A reserve pilot who flies into such first day shall have his required off-duty break and then commence a duty-free period equal to that for which he was originally scheduled.

c. In no case shall any pilot's scheduled duty-free period be changed retroactively.

3. A pilot who is temporarily assigned to a base station other than his home base station for purposes other than training will be entitled to scheduled duty-free periods in accordance with paragraphs 1. and 2. above, except that such scheduled duty-free periods as are normal to the trip selection or reserve flying assignment to which he is assigned will be taken at the base of temporary assignment. Such pilot shall be given priority pass privileges to his home base station to be used at

his option during any scheduled duty-free period of forty-eight (48) hours or more taken at the base of temporary assignment.

4. a. Notwithstanding the provisions of paragraph 1. and 2. above, a pilot who is assigned to a training program involving five (5) or more days of training shall be given one (1) period of forty-eight (48) consecutive hours free from all duty with the Company at the base station at which he is undergoing training, following each five (5) consecutive days of such training. Such pilot shall be given priority pass privileges to his home base station to be used at his option during any such duty-free period.

b. Following the last five (5) consecutive days of such training, in lieu of a scheduled duty-free forty-eight (48) hour period, the pilot shall be given two (2) calendar days free from all duty with the Company at his home base station, prior to resuming line flying duties.

c. In no case shall a pilot have less than twenty-four (24) hours free from all duty with the Company at his home base station prior to resuming line flying duties after the conclusion of such training program.

d. In no case shall a pilot receive less than four (4) separate periods of forty-eight (48) consecutive hours free from all duty with the Company, one (1) of which must be at his home base station, during any calendar month in which he is involved in such training program.

e. Notwithstanding the provisions of 4.a. above, the Company may, at its option, defer a pilot's scheduled duty-free periods while

he is assigned to such training program. To the extent that such scheduled duty-free periods are deferred, the pilot, upon completion of such training shall be given two (2) calendar days free from all duty with the Company at his home base station, for each five (5) consecutive days spent in such training.

f. When the provisions of this Section 21 D.4. impose duty free requirements which delay a pilot's return to line flying, such pilot shall continue to receive training pay and credit in accordance with Section 10, paragraph D.1. of this Agreement until the completion of such duty-free periods.

E. Minimum Pay Credit*

1. A pilot who reports for any flight duty period (including deadheading) shall receive the greatest of the folowing:

(a) Flight time pay and flight time credit actually earned.

(b) Minimum of four (4) hours flight time pay and flight time credit.

(c) One (1) minute flight time pay and flight time credit for each two (2) minutes of a scheduled or rescheduled on-duty period as set forth in paragraph C.3.a. of this Section.

(d) One (1) minute flight time pay and flight time credit for each two (2) minutes of an actual on-duty period as set forth in paragraph C.3.b. of this Section.

The difference between flight time pay and flight time credit earned during such on-duty period and the minimum flight time pay and flight time credit provided above shall

be computed as an extension of the trip which brings the pilot to a station for an off-duty break as set forth in paragraphs C.3.a. and C.3.b. of this Section.

2. Nothwithstanding the provisions of paragraph G.1. of this Section, the provisions of E.1. above shall apply, except that the minimum set forth in paragraph E.1.(b) above shall be two (2) hours flight time pay and flight time credit if:

(a) a return to the airport of departure is required after takeoff by a mechanical air interruption, provided that the pilot does no other flying or deadheading during the same on-duty period, or

(b) a pilot performs or reports to perform ferry flying between co-terminals, or

(c) a pilot performs or reports to perform flying as set forth below, when such flying is confined to a single airport or co-terminals:

(1) engine, instrument, plane, and radio test flights.

(2) Experimental and airway aid test flights, or

(d) a pilot performs or reports to perform flying as set forth below, when such flying is confined to a single airport:

(1) charter, contract or scenic.

(2) courtesy or publicity.

When no flying is performed unde E.2.(b), E.2.(c) or E. 2.(d) above, flight time pay and flight time credit shall be based on the equipment type involved in the assignment for which the pilot was required to report, at half-day, half-night rates.

F. Time Away From Home*

1. A pilot who reports for any flight duty (including deadheading) which involves two (2) or more on-duty periods broken by at least one (1) off-duty period away from such pilot's home base station, shall receive the greater of the following:

(a) one (1) minute pay and flight time credit for each three and one-half (3½) minutes of scheduled or rescheduled time away from his home base station;

(b) one (1) minute pay and flight time credit for each three and one-half (3½) minutes of actual time away from his home base station.

The difference between flight time pay and flight time credit earned during such period of time away from home and the minimum flight time pay and flight time credit provided above shall be computed as an extension of the trip which brings the pilot back to his home base station for legal rest.

2. For purposes of paragraph F.1. above, on-duty periods and off-duty periods shall be as set forth in paragraphs C.3.a. and C.3.b. of this Section.

G. Application of Minimum Flight Time Pay and Flight Time Credit

1. The minimum flight time pay and flight time credit provided under E.1. and F.1. this Section shall not be applicable when a pilot reports for duty but completes no takeoff or does no deadheading.

2. Deadheading covered under the provisions of E.1. and F.1. of this Section shall include:

(a) all deadheading by Company assignment, except in connection with route checks;

(b) deadheading at the pilot's request to pick up the next trip in his sequence when such action does not trigger a double deadhead;

(c) deadheading at the pilot's request as set forth in paragraph C.3.(d) of this Section. Duty time spent in the accomplishment of such deadheading shall be considered an extension of the pilot's on-duty period.

Except as noted above, deadheading at the pilot's request shall not be covered under the provisions of E.1. and F.1. of this Section.

3. For purposes of E.1.(c) and F.1.(a) of this Section, the rescheduled on-duty period shall apply whenever a pilot has been rescheduled as set forth in G.4. below.

4. A pilot is considered to be rescheduled any time there is a change or cancellation in such pilot's flying assignment, including deadheading.

5. The provisions of E.1. and F.1. of this Section shall not be applicable to excess duty hours or excess time away from home resulting from the pilot's request to be rescheduled to deadhead on a flight other than that for which he is legally scheduled or rescheduled by the Company.

6. The provisions of E.1.(b), E.1.(c) and F.1.(a) of this Section shall apply, under Sections 8, 10 B, 10 C, 10-D-2 and 24 E of this Agreement, to pilots who hold trip selection awards.

7. Comuptation of flight time pay and flight time credit applicable under Section 24 F of

this Agreement shall include all flight time pay and flight time credit due under the provisions of Section 21 E and 21 F.

8. When a pilot's arrival at his home base station or scheduled layover station is by way of surface transportation, his arrival time, for purposes of C.2., C.3., E.1. and F.1. of this Section, shall be considered to be the scheduled departure time of the surface transportation to be used plus the normal air time and debriefing time.

In this case, an off-duty period under C.3.(b) of this Section shall start at the scheduled arrival time of the surface transportation used.

9. When a pilot performs or reports to perform flying set forth in E.2.(b), E.2.(c) and E.2.(d) of this Section, before, during or after an on-duty period involving flying not covered under E.2.(b), E.2.(c) or E.2.(d), or while on layover involving an off-duty break between such on-duty periods, he shall receive:

(a) flight time pay and flight time credit in accordance with E.1. or F.1. of this Section, as applicable, for the on-duty periods not involving flying covered under E.2.(b), E.2.(c) or E.2.(d), plus,

(b) one (1) minute flight time pay and flight time credit for each two (2) minutes of actual on-duty time for the period involving flying covered under E.2.(b), E.2.(c), or E.2.(d), but not less than the flight time pay and flight time credit actually earned and in any event not less than two (2) hours' minimum flight time pay and flight time credit.

H. Maximum Flight Time Pay and Flight Time Credit

1. Except as set forth in G.9. of this Section, flight time pay and flight time credits provided in paragraph E and paragraph F of this Section are not cumulative, but only the greater will apply.

2. A pilot shall be entitled to only the flight time pay and flight time credit for scheduled or rescheduled time away from home, as provided in F.1. of this Section, when the pilot's return to his home base station is delayed by a strike or work stoppage which substantially affects the operation of the Company, provided, if the pilot is returned to his home base station by the Company, in this specific case the return deadhead transportation to the pilot's home base station is called "pilot's convenience", and no reschedule is involved.

3. The provisions of F.1. of this Section shall not apply beyond the first twenty-four (24) hours of excess time away from home resulting from the delay in a pilot's return to his home base station due to an official NOTAM which closes, for a period of twenty-four (24) hours or more, the airport at which such pilot is laying over or at which such pilot is forced to lay over as the result of such airport closing, provided that such pilot is assigned by the Company to deadhead to his home base station via the first available deadhead transportation. In this instance, excess time away from home shall be the difference between the time such pilot actually arrives at his home base station and the time he would have arrived had there been no airport closing.

In the circumstances set forth above, when such pilot is assigned by the Company to re-

main at the layover station, the normal provisions of E.1. and F.1. of this Section shall be applicable.

I. Scheduled Trip or Trip Pairing(s)

A scheduled trip or trip pairing(s) as used in this Section shall be that established by the Company in a regular publication prepared in conjunction with each re-selection of pilot flying assignments or extra section established by the Company. Such publication shall be available for inspection by all pilots on Company premises. It is also a pairing or re-pairing of any flying assignment prepared by crew schedule or flight dispatch.

SECTION 22
CERTIFICATES AND RATINGS

A. Eligibility for Certificates and Ratings

Any copilot has been in the service of the Company for an aggregate of sixty (60) months as a copilot shall receive training for an Airline Transport Pilot Certificate and equipment rating necessary for advancement to the status of Reserve First Pilot on at least one type of airplane currently operated by the Company in regular schedule. To establish eligiblity for such certificates and ratings, such copilot may be required to have had one hundred (100) hours of flying as a copilot on the type airplane on which he is to be qualified within sixty (60) days prior to checkout for such certificates. The opportunity to receive such certificates and ratings shall be afforded during January, February, and March of each year, provided the Company may in addition thereto afford the opportunity to receive such certificates and ratings at other periods through the year, or to copilots with a

lesser length of service. In the latter case, copilots with a lesser length of service shall be grouped in accordance with system seniority and such groups shall be afforded, in accordance therewith, the opportunity to acquire such certificates and ratings. A copilot who has been afforded the opportunity and who has received such certificates and ratings will be designated by the Company as an "ATPC Pilot."

B. Qualifying Out of Order of Seniority

A copilot who has been given the opportunity to qualify for advancement in status, or promotion to Reserve First Pilot, and is unable to so qualify at that time, shall not hold up the promotion of other copilots junior to him provided that copilots unable to so qualify shall be governed by the provisions of Section 15 C of this Agreement.

SECTION 23
FILLING OF BID PILOT VACANCIES

A. Bidding Procedure

All pilot bid vacancies shall be filled promptly by bulletined bidding, and assignment procedure, and exercise of reinstatement rights, in accordance with the following provisions:

1. All pilot vacancies, as determined in accordance with paragraphs L and M of this Section, to which no pilot has a prior claim shall be bulletined and shall be filled in accordance with the three-step bidding procedure and resultant assignment procedure provisions in this Section, in that order of sequence as provided hereinafter.

a. (First Step) All first step vacancy or vacancies shall be bulletined and awarded in

accordance with the procedure stipulated in this Section. A first step vacancy is any vacancy to which no pilot has a prior claim.

b. (Second Step) All vacancies created by pilots who are successful bidders under the first step bidding procedure stipulated in subparagraph 1 a. of this paragraph shall be bulletined and filled precisely the same as such first step vacancies, provided that any successful bidder under this subparagraph shall not be awarded the bid finally until the successful bidder resulting from the operation of subparagraph 1 a. of this paragraph has been placed on regularly scheduled flying for the vacancy for which he was the successful bidder.

c. (Third Step) All vacancies created by pilots who are successful bidders under the second step bidding procedure stipulated in subparagraph 1 b. of this paragraph shall be bulletined and filled precisely the same as such second step vacancies, provided that any successful bidder under this subparagraph shall not be awarded the bid finally until the successful bidder resulting from the operation of subparagraph 1 b. of this paragraph has been placed on regularly scheduled flying for the vacancy for which he was the successful bidder.

d. All vacanies created by the operation of subparagraphs numbered 1-a, 1-b and 1-c of this paragraph shall be filled by assignment as stipulated in paragraph B of this Section.

B. Assignment of Bids

1. When the first three steps of the bidding procedure defined in paragraph A of this Section have been completed and any first pilot vacancy or vacanies have been created and exist

at any base station or stations as a result thereof, the Company shall then promptly fill such first pilot vacancy or vacanies from the ranks of the reserve pilots and ATPC pilots at the base station at which the vacancy or vacancies exist in the order of system seniority at such base station.

2. When the first three steps of the bidding procedure defined in paragraph A of this Section have been completed and any copilot vacancy or vacancies have been created and exist at any base station or stations as a result thereof, the Company shall then promptly fill such copilot vacancy or vacanies from the ranks of non-bid pilots, at the base station or stations at which such vacancy or vacanies exist in the order of system seniority at such base station.

3. All pilots assigned to bid status at a base station in accordance with the provisions of this paragraph shall be deemed to be regular bidholders at such base station.

C. Description of Vacancies

1. All bulletins describing a pilot vacancy or vacanies shall be posted prominently at all stations where pilots are based, and shall include the following information:

a. The base station or stations at which the vacancy or vacanies exist.

b. The number of vacanies to be filled.

c. The type or types of equipment that will be operated and the route or routes that will be flown, from the base station or stations where the vacancy or vacanies exist, at the time such vacancy or vacanies are scheduled to be filled.

d. The highest and lowest system seniority numbers of the pilots in all pilot statuses at the base station, when such bulletin is posted.

e. A brief, clear description of the cause or causes that occasioned the vacancy or vacancies, i.e., new flying time, resignation, vacated bids, etc.

f. A deadline date after which bids will not be accepted, provided that such date shall be not less than ten (10) calendar days after the posting of a vacancy bulletin on the bulletin boards at any pilot base station.

All bids shall be submitted by U.S. Mail or by telegram so as to arrive not later than the deadline date.

2. All bulletins describing a pilot vacancy or vacancies posted on bulletin boards shall remain posted until they are replaced thereon by a notice containing the names of the successful bidder or bidders for the vacancy or vacancies bulletined. The successful bidder or bidders shall be notified promptly thereof by Telegram or Registered Air Mail letter, return receipt requested, after the closing date of bids for any vacancy.

D. Bidding for New Bases

Pilots bidding for vacancies on new or reactivated base stations shall be permitted to qualify their bids by indicating their seniority position thereon that will be acceptable to them at that base station as a condition of their acceptance of such bid award.

E. Withdrawal of Bids

Pilots who bid for bulletined vacancies may withdraw such bids by telegram at any time prior

to the deadline date stipulated on the posted bulletin.

F. Acceptance of Bids

All successful bidders on pilot vacancies, bid, published, and awarded in accordance with the provisions of this Section, shall forthwith accept the award resulting therefrom.

G. Reporting of Successful Bidders

1. A pilot receiving a base station award as a result of the bidding procedures specified in this Section, when such award involves transferring from one base station to another, shall normally be given a period of not less than fifteen (15) days to report to his new base station from the date of U.S. postmark of his notice by Air Mail Letter or date of transmission of telegram from the Company that he is a successful bidder, or that he has received such base station award.

2. A pilot who receives a base station award as a result of the bidding procedures specified in this Section, and who is required by the Company to report to another base station in less than fifteen (15) days shall be afforded reasonable time off at a later date, not to exceed fifteen (15) days, at the time of his household move, to facilitate completing his moving arrangements. The pilot's schedule will be so arranged at his new base station as to minimize insofar as is possible, loss of flying time during such reasonable time off in which moving arrangements are being completed.

3. A pilot required to report to another base station in less than fifteen (15) days under the provisions of this paragraph shall be allowed actual reasonable expenses for himself only at

his new base station for the number of days equivalent to the difference between the standard fifteen (15) day reporting date and the number of days prior to such time during which he was actually required to report. Where Company Regulations or any provision in this Agreement provides additional moving expenses for specific moves, such expenses shall be in addition to, but not in duplication of, the expense provisions of this paragraph.

H. Qualification of Successful Bidder

When a successful bidder fails to qualify within thirty (30) days from the effective date of bid, subject to weather, equipment availability, or extent of qualification requirements, to fill the vacancy for which he has been the successful bidder, he shall forthwith return to his former base station and bid status at his own expense. The vacancy that he failed to fill by failure to qualify over routes or on equipment shall then be proffered promptly to the next highest bidders, in the order of system seniority, on the list of bidders for that vacancy.

I. Mutual Transfers

Mutual transfers of base stations between any pilots, irrespective of status, shall not be permitted.

J. Awarding of Bids

The senior pilot bidding who is a successful bidder, or the pilot receiving a vacancy under the operation of subparagraphs B-1 and B-2 of this Section, shall be awarded the vacancy, provided that when such pilot does not have the required route qualifications, equipment qualifications, or ratings, he shall be afforded the opportunity by the Company to acquire such qualifications and ratings within a reasonable period of time.

K. Reinstatment Rights

1. Reinstatement rights of a pilot mean a pilot has the right to return to his former base station and status within two (2) years after the date of the involuntary loss by him of his last bid status held at a base station. Any pilot vacancy or vacancies, except vacancies created by reason of death, retirement, resignation, or permanent physical disability, shall be filled by the pilots, other than pilots on furlough, who hold valid reinstatement rights to the base station or stations where such vacancy or vacancies exist, in accordance with the relative system seniority of such reinstatement rights holders to each base station, and such pilots shall then be deemed to be bidholders in the same manner and to the same extent as though they were successful bidders for such vacancy or vacancies. Any vacancy or vacancies created by reason of death, retirement, resignation, or permanent physical disability shall not be filled by reinstatement rights holders, and for purposes of this Section, such vacancies shall be deemed to be first step vacancies, and shall be bulletined and filled in accordance with the provisions of this Section.

2. Any reinstatement rights holders who achieve bid status as a result of a successful bid, or otherwise in accordance with the provisions of this Agreement, shall forfeit all reinstatement rights held at the time and prior to the attainment of such bid status. No pilot may hold reinsatement rights to more than one base station and in more than one pilot status at any one time, except that a pilot who holds bid status or reinstatement rights in one pilot category may, in addition thereto, hold current

reinstatement rights in a higher pilot category to the same base station at which such bid or reinstatement rights are held.

L. First Pilot Bid Vacancies

The number of first pilot bid vacancies to be bulletined and awarded at a base station shall be determined by dividing the total monthly (30-day) scheduled flight time plus scheduled credited time assigned to a base station by the applicable monthly maximum (75 or 80 hours) and the resultant number will be the number of first pilot bid vacancies that would be bulletined and awarded at a base station, and any remaining fraction equal to or greater than sixty (60) hours of monthly flight time will be deemed to be an additional bid and shall be so bulletined.

M. Copilot

The number of copilot bid vacancies to be bulletined and awarded at a base station shall be equal to the number of first pilot bid vacancies determined in accordance with paragraph L of this Section.

N. Reserve Flying

1. The Company shall maintain reserve first pilots and reserve copilots at each base station to provide reasonable working conditions for the pilots at each base station.

2. The minimum number of reserve pilots in each pilot category at each base station in each equipment division shall be determined as follows:

a. The total monthly hours (scheduled flight time plus scheduled credited time) divided by the applicable monthly maximum (75 or 80 hours) divided by ten (10) shall

produce a fixed number of reserve pilots in each category to which shall be added one (1) reserve pilot in such category for any remaining fraction of one half (½) or more.

b. When the division requirement in a. above is 0, 1, 2, 3 or 4, add two additional reserves; 5, 6, 7, 8, 9 or 10, add three additional reserves; 11, 12 or 13, add four additional reserves; 14, 15 or 16, add five additional reserves; 17, 18 or 19, add six additional reserves.

3. The minimum number of reserve pilots in each pilot category and equipment subdivision at each base station shall be determined by prorating the reserve pilots determined under 2 above in accordance with the total monthly hours in each equipment subdivision at such base station. The remaining number of reserves are to be posted in the higher paying equipment subdivision(s).

4. When one or more pilots is moved during a calendar month from the propeller equipment division to the jet equipment division, there shall be added to the minimum required in 2.b. above for the following month, one (1) additional reserve. This new fixed division reserve requirement will be increased by one (1) in each succeeding month in which one or more pilots is moved from the propeller equipment division to the jet equipment division. If there is no movement between divisions during a calendar month, the minimum requirement for 2.b. above may be reached by reducing the requirement by one (1) reserve each calendar month. Effective with the seventh (7th) calendar month following the effective date of this Agreement, the provisions of this paragraph 4 shall not be applicable in any month if in six (6) months

preceding such month no pilot at the base has been moved from the propeller division to the jet division during a calendar month.

5. Nothing in this paragraph shall be deemed to prevent the Company from increasing the number of reserve pilots above the ratio stated herein, or from assigning or designating additional reserve pilots at any base station, in accordance with all the provisions of this Agreement relating to such assignments or designations.

O. Pilot Status Listing

The Company shall publish a list each month on which shall appear the names and statuses of all of the pilots in the employ of the Company and the base stations at which they are currently domiciled. Such list shall include bid status of pilots, their seniority numbers, valid reinstatement rights, the duration thereof, and the base stations at which such bid status and reinstatement rights are held. Three current copies of such list shall be distributed monthly to the Base Crew Schedule offices at each base station where pilots are domiciled, and one additional current copy of such list shall be inserted in the Bulletin Books at all pilot base stations, and one current copy shall be furnished to the Chairman and Vice Chairman of each Local Pilot Domicile and the Association President. Such lists shall be made available at all times for the examination of the pilots, provided that no such list shall be removed from the Company property.

P. General

1. All pilots, regardless of bid status, may bid any pilot bid vacancy.

2. Irrespective of any of the provisions of this Agreement, successful bidders to a new or reactivated base station who lose bid status

within six (6) months of the activation of such base station, causing any of such successful bidders to transfer from the base station within the aforementioned six (6) months, shall have moving expenses to and from such new or reactivated base station paid by the Company.

3. When extraordinary circumstances arise involving extreme personal hardship and necessitating the transfer of a pilot to another base station, such pilot may be permitted to transfer to such other base station in non-bid status with the forfeiture of all of his reinstatement rights to his former base station and forfeiture of bid status, if any. Such pilot shall, irrespective of his system seniority and former status, revert to the most junior non-bid pilot position at the base station to which he transfers and shall be permitted to exercise his seniority at that base station only with respect to pilots added to that base station in non-bid status subsequent to his transfer. In the event that there is any curtailment of pilots at the base station, the transferring pilot shall, irrespective of any other provisions of this Agreement, be transferred before any other pilots who were at the base station prior to his arrival are required to transfer. Except as specifically provided in this subparagraph, the rights and privileges extended to such pilot by the other provisions of this Section shall apply.

Q. Maintenance and Engineering Flying

1. Pilots shall be domiciled at the Maintenance and Engineering Base at Tulsa, Oklahoma (TULE). Vacancies shall be proffered to pilots on the seniority list on a systemwide basis.

2. Vacancies in each pilot category shall be bulletined and awarded according to the ap-

propriate portions of Section 23 of the Agreement except as follows:

a. 23 C—added to the bulletin will be:
(1) Job description
(2) minimum qualifications
(3) the rate or rates of pay.

b. 23 F—Any pilot awarded the vacancy at the Maintenance and Engineering Base will normally be required to serve in this capacity for not less than one year, during which time he shall be restricted from bidding any pilot vacancy which may arise anywhere in the system.

c. At the conclusion of one (1) year of service at the Maintenance and Engineering Base or at an earlier time if affected by a reduction in force or by mutual agreement, the pilot may exercise those rights denied in subparagraph b. above.

3. a. The provisions of Section 23, paragraphs L, M and N and Section 20, paragraph C. 4. shall not be applicable to TULE.

b. The number of vacancies in each pilot category to be bulletined and awarded at TULE shall be sufficient to cover all flying normally required to be performed, provided that the number of Bid First Pilots domiciled at the base shall be one (1) more than the number of Bid Copilots.

c. The junior Bid First Pilot at TULE may be required to fly as copilot as needed at first pilot rates.

d. Other than supervisory pilots, no pilot shall be domiciled at TULE who does not hold bid status at the base.

e. Upgrading for temporary assignment as first pilot at TULE shall, when necessary,

be accomplished by proffer, in order of seniority, to the Bid Copilots at the base. When a TULE based Bid Copilot is assigned as a first pilot during a calendar month, his monthly salary shall be prorated on the basis of the ratio of the days served in each pilot category to the total days served in the month.

4. When temporary assignments for Copilot flying are required, they shall be proffered, in order of seniority, to qualified pilots at the nearest overmanned base stations. Pay for such temporary assignments shall be at the rate of pay for the assignment or scheduled trips missed by the assigned pilot, whichever is greater.

5. Pilots moving to and from assignments as described herein shall pay their own moving expenses, except in cases of reduction in force at the Maintenance and Engineering Base, in which case expenses will be paid by the Company in the same manner as reductions in force at any pilot base.

SECTION 24
FLYING ASSIGNMENTS

A. Selection

1. Order of Selection

A pilot may select any of the monthly flying assignments posted for selection at his home base station. Such pilot shall be awarded a regular or reserve flying assignment in accordance with his system seniority at each base station as follows:

a. Pilot Flying Assignments

(1) Bid First Pilots at the base station.

(2) Bid Copilots at the base station who are eligible for first pilot flying.

(3) Pilots assigned in accordance with Section 24, paragraph D. 2 or 3. with no bid status (eligible for first pilot flying only, in this classification, or if no first pilot flying available reverts to Classification 6.).

(4) Bid Copilots at the base station who are not eligible for first pilot flying.

(5) All other pilots not holding bid status, except that when a copilot holding reinstatement rights is transferred to another base station in non-bid status, by the reverse order of system seniority rule, he may select trip assignments in accordance with his relative system seniority at the base station in Classification 4. if his seniority merits.

2. Reserve Assignments

a. When a Bid First Pilot selects and is awarded a reserve first pilot flying assignment, he shall be subject to all the provisions of this Agreement applicable to Reserve First Pilots except Section 24, paragraph D, as though he were a Reserve First Pilot.

b. When a Bid Copilot selects and is awarded a reserve copilot flying assignment, he shall be subject to all the provisions of this Agreement applicable to Reserve Copilots as though he were a Reserve Copilot.

c. When additional flying assignments for Reserve First Pilots become necessary, pilots under A. 2. of paragraph 1. shall be awarded

such reserve flying assignments at a base station in order of System seniority from those pilots who selected but were not awarded such assignments.

d. When all the monthly reserve flying assignments offered for selection at a base are not filled by the voluntary or obligated selection of pilots qualified for such flying, the selections may be filled by the assignment, in reverse order of System seniority at the base, of those pilots, regardless of bid status, who hold the necessary equipment qualifications, subject to the following provisions:

(1) The limitations and pay provisions of paragraph E. 1. of this Section shall apply.

(2) The Company shall be required to undertake the training of one (1) pilot, in the applicable pilot category and equipment subdivision, for each pilot so assigned, but not in excess of the number of pilots in the applicable category who were, at the time of such assignment, being withheld from training in the applicable equipment type, or who by virtue of the provisions of paragraph E.2. of this Section, became entitled to such training in the same month.

(3) The required training set forth in paragraph (2) above shall be completed by the first of the fourth month following the month for which the assignment was made which incurred the obligation. In the interim, the Company may continue, if necessary, to assign to reserve flying assignments, pilots in each category and equipment subdivision equal to the number

of training obligations incurred in such category and equipment subdivision, without incurring further training obligations. If the Company assigns to reserve flying, pilots in a particular category and equipment subdivision in excess of the number of training obligations previously incurred in such category and equipment subdivision, an additional training obligation shall be incurred in accordance with pagagraph (2) above, for each pilot so assigned.

(4) A pilot who is assigned to reserve under the provisions of paragraph (3) above shall be entitled to his choice of off-duty periods, as provided under Section 21D of this Agreement, as between any of the off-duty dates offered for selection in the reserve pilot category and equipment subdivision in the monthly trip selection posting, whether or not his choice would mean duplication of such off-duty dates, or the off-duty dates posted in the selection such pilot would have been awarded had he not been assigned to reserve, not to exceed the equivalent of five (5) duty-free periods of forty-eight (48) hours each.

3. Assignments in Lower Pilot Categories

a. When a Bid First Pilot selects and is awarded a copilot flying assignment, he shall be subject to all the provisions of this Agreement applicable to copilots as though he were a copilot.

b. Reserve First Pilots may be assigned as copilots.

4. Effect on Bid Status

The selection of any flying assignment will not affect a pilot's bid status.

B. Preference Over Reserve Pilots

1. A pilot, other than a reserve pilot, who is low on flying time during any calendar month shall, when legal and available be given preference over reserve pilots in his category to open flying in the equipment division (jet or propeller) in which he holds a trip selection award. Such preference may be exercised for the purpose of making up flying time but only to the extent of the difference between such pilot's projection at that time and his applicable monthly maximum. Such pilot shall be given preference to any flying assignments for which flight pay is paid and which are normally flown by reserve pilots, provided that the operation of such preference shall not require the displacement of any pilot (including himself) from his regularly scheduled trip.

2. Notwithstanding the provisions of paragraph B. 1. above, a pilot who is scheduled to report or who reports for a flight duty period or flight duty periods as set forth in sections 21 E or 21 F of this Agreement, may be assigned by the Company to perform flying as set forth in paragraphs E. 2. b., E. 2. c. and E. 2. d. of Section 21 before, during or after such pilot's scheduled flight duty period or periods.

C. Preference of Reserve Pilots

1. When no other pilots exercise preference in their equipment divisions (jet or propeller), reserve pilots at a base station, when available, shall be given preference to open flying in their pilot category and equipment division as follows:

a. Proffer in order of seniority to, thereafter assign in reverse order of seniority,

available reserve pilots in the equipment subdivision in which such open flying falls.

b. Proffer in order of seniority to, thereafter assign in reverse order of seniority, available reserve pilots in the next lower paying equipment subdivision.

c. Repeat step b. through lower paying equipment subdivision.

d. Proffer in order of seniority to, thereafter assign in reverse order of seniority, available reserve pilots in the next higher paying equipment subdivision.

e. Repeat step d. through higher paying equipment subdivisions.

Equipment subdivision, as used in this Section, shall mean the type or types of aircraft involved in a reserve flying assignment as posted for selection.

2. Effective with the flying for the eleventh (11th) calendar day of the month, and continuing through the twenty-fourth (24th) calendar day of the month, the Company may withhold from flying, in reverse order of seniority within each equipment subdivision, each reserve pilot whose accumulated flight time credits exceed a daily average of two hours and thirty minutes (2:30) in the jet equipment division, two hours and forty minutes (2:40) in the propeller equipment division. In computing the daily average, the calendar day or days withheld shall be included. A reserve pilot who is withheld in accordance with this provision must be notified of such action prior to 0001 of the calendar day on which he is to be withheld. Such reserve pilot shall not be considered to be on reserve until the completion of the calendar day or days withheld, except

that such pilot may be assigned to open flying in his equipment subdivision before the assignment of any pilot who holds a regular trip selection award.

3. Effective with the flying for the fifteenth (15th) calendar day of the month and continuing through the twentieth (20th) calendar day of the month, when assigning reserve pilots in reverse order of seniority as provided in paragraph C.1. above, the Company may consider the reserve pilot whose accumulated flight time credits are less than the accumulated flight time credits of each of the other reserve pilots in his equipment subdivision to be the junior available reserve pilot in such equipment subdivision.

4. Under the provisions of this paragraph C, pilots who hold flying assignments on jet aircraft may not fly propeller aircraft during the same calendar month nor may pilots who hold flying assignments on propeller aircraft fly jet aircraft during the same calendar month. However, subject to the provisions of Section 23-N-4, the Company may, when it is deemed necessary during the calendar month, provide additional reserves in the jet equipment division in order of seniority from those pilots in the propeller equipment division who hold the necessary jet qualifications and who selected but were not awarded such assignments, thereafter assign in reverse order of seniority from the propeller equipment division those pilots who hold the necessary jet equipment qualification.

D. Flying Assignments — Reserve Pilots

1. Advancement to the status of First Pilot or Reserve First Pilot at a base station shall be

accomplished by promotion from the ranks of the ATPC Pilots at such base station, in order of system seniority.

2. When additional First Pilots or Reserve First Pilots are required at a base station and there is an insufficient number of ATPC Pilots at such base station eligible for promotion, the Company may furnish additional First Pilot or Reserve First Pilot coverage to the base station by proffering assignment to First Pilots, Reserve Pilots and ATPC Pilots, in order of system seniority, at the nearest major base station normally providing reserve coverage. If such major base station is unable to furnish additional pilots, proffer shall be made to the First Pilots, Reserve Pilots and ATPC Pilots at the nearest base station where a surplus of such pilots exists. In the event that an insufficient number of the eligible pilots accept the proffer of assignment, the Company will assign in the reverse order of system seniority from the ranks of the ATPC Pilots at the nearest base station at which a surplus of such ATPC Pilots exists.

3. When the number of Reserve First Pilots at a base station is inadequate for the coverage of short duration reserve flying assignments, the Company may then assign additional Reserve First Pilots from the ranks of the Reserve First Pilots at the nearest major base station who hold the route and equipment qualifications necessary for the assignment. In the event that there is an insufficient number of such pilots available at the major base station, the Company may assign from the nearest base station at which an excess of such qualified Reserve First Pilots exists.

4. A pilot assigned in accordance with sub-

paragraphs 2 and 3 of this paragraph shall be eligible for reserve flying only (when at other than his regular base station). A pilot so assigned shall be deemed, for purposes of this paragraph, to be temporarily assigned until such time as a Reserve First Pilot or ATPC Pilot properly domiciled at the base station becomes available for Reserve First Pilot duty, or until such time as the Reserve First Pilot flying assignment is terminated, whichever is sooner, at which time such assigned pilot shall forthwith be returned to his former base station and status.

5. A pilot assigned in accordance with subparagraph 3 of this paragraph D will be allowed expenses while away from his regular base station in accordance with Section 11 D. A pilot assigned in accordance with subparagraph 2 of this paragraph D will be allowed expenses while away from his regular base station in accordance with Section 11 D for the first six months of such assignment; provided that such pilot may elect to accept, if offered, moving expenses in accordance with Section 12. After six months, moving expenses will be paid in accordance with Section 12, or expenses paid in accordance with Section 11 D at the option of the Company.

E. Qualification on Equipment

1. A pilot who selects and who by virtue of his seniority and qualifications is entitled to be awarded a specific trip selection at his home base station, may be denied such trip selection and assigned another trip selection not of his choice subject to the following:

a. A pilot denied under this provision shall receive flight pay for the trip selection to which he is assigned but not less than the

pay for the scheduled flight time, including applicable credits under Section 21. E. and 21. F. of this Agreement, of the trip selection he was denied.

b. Under this provision a copilot may be denied the trip selection of his choice for not more than two (2) months in a calendar year in order to permit the assignment of such copilot to another selection for purposes of training such copilot or to avoid the pairing of two cockpit crew members, both of whom are minimally qualified on the equipment or the route.

c. Under this provision a copilot preparing for assignment to duty as a First Pilot or Reserve First Pilot may be assigned to a trip selection not of his choice for a period of not more than six (6) consecutive months, provided, however, that the pay provisions of E.1.a. above shall not apply to copilots under Section 22 of this Agreement.

d. A Bid Copilot may be assigned to a Reserve First Pilot flying assignment.

e. A Bid Pilot may not be assigned to a reserve selection in his category except that under the provisions of A.2.e. and C.4. of this Section a Bid Pilot may be assigned to reserve in his category for not more than one (1) month in a calendar year.

f. Unless otherwise provided in this Section, no pilot may be denied under this provision more than one (1) month in a calendar year.

g. Except as set forth in b. and c. above, denials and assignments under this provision shall be made in reverse order of System seniority at the base station.

2. a. A pilot who by virtue of his seniority is entitled to be awarded a specific trip selec-

tion may be denied such selection for lack of equipment qualification. If such pilot is denied a trip selection on such equipment for each of the succeeding two (2) months or is denied a trip selection on such equipment for any one (1) of the third, fourth or fifth months following the month of the first selection he was so denied, such pilot shall begin training on such equipment by not later than the sixth month following the month of the first selection he was so denied. Starting in the third month following the month of the trip selection he was denied for lack of qualification, a pilot shall be paid for the monthly flying assignment to which he is entitled by virtue of his seniority or the pay involved in his regular or reserve monthly flying assignment, whichever is greater. Such pay shall continue until such pilot completes the required training or declines an assignment to a training program.

b. A pilot who by virtue of his seniority is entitled to be awarded a specific trip selection may not be denied such selection for having failed to maintain the necessary equipment qualifications. The Company shall furnish such requalification. Such pilot shall receive flight time pay and flight time credit in accordance with Section 8 of this Agreement until such requalification is accompublished. Such pilot shall be available on other than scheduled duty free periods for purposes of obtaining such requalification.

c. A pilot who by the exercise of his seniority selects a reserve flying assignment in the propeller equipment division and is denied such assignment because he lacks

equipment qualification and is accordingly made eligible for training as set forth in paragraph a. above, must upon completion of training, and prior to other selections, bid all selections, including reserve flying assignments, involving the equipment on which he received training in at least one (1) month in the next three (3) months immediately following the completion of training.

d. A pilot need not select a specific trip selection in his category on a lower paying piece of equipment in order to protect his earnings. Such a pilot who held a regular or reserve trip selection on a given piece of equipment and who can no longer hold such selection shall be guaranteed no less pay than his last regularly scheduled monthly sequence of trips on such equipment would produce or his reserve guarantee on such equipment or the pay for the flying assignment to which his seniority entitles him, whichever is greatest, until such time as he receives the necessary equipment qualifications.

3. a. A pilot who, subsequent to August 1, 1963, receives training and qualification on Boeing 707 or Convair 990 type aircraft by virtue of the acceptance of a proffer or entitlement under the provisions of paragraph E.2. of this Section, may be required to select all flying assignments, including reserve in his category on both Boeing 707 and Convair 990 aircraft for a period of twelve (12) consecutive calendar months following the date of his aircraft rating qualification.

b. Notwithstanding the provisions of paragraph a. above, the provisions of paragraph

E.2. of this Section shall be applicable to such pilot, if, during the period of twelve (12) calendar months following his aircraft rating qualification, he selects and is otherwise entitled to be awarded a flying assignment on the Boeing 707 or Convair 990 type on which he had not previously been qualified.

c. Such pilot does not relinquish his right to select flying assignments on other than Boeing 707 or Convair 990 aircraft for purposes of establishing eligibility for training under the provisions of pagagraph E.2. of this Section but notwithstanding contrary provisions of paragraph E.2. of this Section, the Company shall not be obligated to undertake the training of such pilot earlier than the first month following the expiration of such pilot's twelve (12) month obligation.

4. a. Notwithstanding the provisions of paragraph E.3. of this Section, when the Company introduces new equipment, the assignment of pilots to training shall be accomplished in order of seniority from among those pilots at the base station who accept, in writing, a Company proffer of training on such new equipment. The final proffer of training at each base shall be so identified and thereafter training on such new equipment shall be accomplished under the provisions of Section 24 E.2., provided, however, that the Company shall not thereafter be prohibited from posting additional proffers of training should they become necessary.

b. A pilot who accepts a proffer of training as set forth in a. above may be withheld from such training in reverse order of seniority for a period not to exceed six (6)

months, only due to the avilability of an insufficient number of equipment qualified pilots in his category in the equipment subdivision he is vacating. Such pilot shall be guaranteed the pay of any pilot junior to him in any month such junior pilot flies such new equipment.

5. a. A pilot who receives training and qualification on an aircraft type introduced by the Company subsequent to August 1, 1963, by virtue of the acceptance of a proffer or entitlement under the provisions of paragraph E.2. of this Section, may be required to select all flying assignments, including reserve in his category, on such new equipment type for a period of twelve (12) consecutive calendar months following his aircraft rating qualification.

b. Such pilot does not relinquish his right to select flying assignments in his category on higher paying equipment for purposes of establishing eligibility for training or to select flying assignments in his category on higher paying equipment on which he holds qualification. The Company may release such pilot from his twelve (12) month obligation in order of seniority from among those obligated pilots who have fulfilled the Company's minimum experience requirements on such new equipment and who have selected flying assignments on higher paying equipment.

c. Such pilot does not relinquish his right to select flying assignments in his category on lower paying equipment on which he holds qualification. The Company may award such pilot the flying assignment of his choice on lower paying equipment in order of seniority

from among those obligated pilots who have fulfilled the Company's minimum experience requirements on such new equipment and who have selected flying assignments on lower paying equipment. The use of a qualified pilot to replace such pilot in a given month shall not entitle another pilot to establish eligibility for training on such new equipment. The release of such pilot in a given month does not cancel the remainder of such pilot's twelve (12) month obligation.

d. Such pilot does not relinquish his right to select flying assignments in his category on lower paying equipment for purposes of establishing eligibility for training under the provisions of paragraph E.2. of this Section but, notwithstanding contrary provisions of paragraph E.2. of this Section, the Company shall not be obligated to undertake the training of such pilot earlier than the first month following the expiration of such pilot's twelve (12) month obligation.

e. A pilot who is not released in accordance with b, c. and d. above shall be guaranteed the flight pay of any trip selection to which his seniority would entitle him and which he is denied, starting in the seventh (7th) month of his twelve (12) month period of obligation.

6. a. A pilot who holds qualification on a particular type or types of equipment, who transfers into a base from which such type or types of equipment are operated shall not utilize his qualification to be awarded or assigned to a trip selection or reserve flying assignment on such type or types of equipment so long as pilots senior to him at the

base who desire such qualification remain unqualified on such equipment types.

b. A pilot who transfers into a base lacking qualification on a particular type or types of aircraft operated out of such base and who establishes eligibility for training on one such equipment type under the provisions of Section 24 E.2. shall be paid for the flying assignment to which his seniority would normally entitle him or the pay earned for the month, whichever is greater.

c. A pilot who is obligated under the provisions of this Section does not relinquish his right to bid or qualify for a base vacancy under the terms of this Agreement, except that he may be withheld from occupying such base vacancy until the availability of a qualified pilot to replace him on the equipment on which he is obligated, or until ninety (90) days have elapsed, whichever first occurs. A pilot who is so withheld will be considered on a temporary assignment effective with the date of the bid award and the provisions of Section 11 D of this Agreement shall apply. Such pilot, in addition to the monthly flying assignment which he selects at the base station at which he is being held, shall also select a monthly flying assignment at his new base station for pay purposes and shall receive pay equal to that which he would have earned on a scheduled basis on the flying assignment of his choice at his new base station consistent with his seniority or the pay earned for the month, whichever is greater.

7. A pilot who completed training on Convair 990 aircraft within the five (5) months preceding the effective date of this Agreement,

may be required to select all flying assignments on 990 aircraft, including reserve in his category, until six (6) months from the date of his aircraft rating qualification, subject to the provisions of paragraph 3.a., 3.b., and 3.c. above.

F. If a regular scheduled pilot is legal in all respects for his next regularly scheduled trip, but is assigned by the Company to perform other flying instead of his regular trip, he shall be paid and credited for whichever of the two trips produces the higher pay. If as a direct result of an assignment a pilot loses a trip or trips for which he otherwise would have been legal in all respects without such assignment, he shall receive flight pay and credit for the trip or trips missed, but not beyond his applicable monthly maximum.

G. Composition

1. A regularly scheduled monthly flying assignment will be made up in the following manner:

A. A single trip pairing, that is, a going and returning trip.

b. It may consist of two or more trip pairings.

c. It may be a schedule wherein different trips or trip pairings are flown during the month.

d. Vacation relief will be a regular flying assignment insofar as practical.

2. In addition to regular scheduled flying assignments, there will be a number of reserve flying assignments, the number to be determined under the provisions of this Agreement. Reserve flying assignments will be posted

in accordance with equipment subdivisions established for the base, provided that a given type of equipment shall not appear in more than one equipment subdivision.

SECTION 25

REDUCTION OF BID STATUS — FURLOUGHING

A. Loss of Status

When there is a furloughing of pilots on the system, all such furloughing of pilots shall be accomplished in the reverse order of system seniority on the system. When for any reason at any time there is any lowering or loss of the bid statuses of pilots at any base station or stations, such changes in pilot statuses shall be accomplished in the reverse order of system seniority at such base station or stations, except as provided in this Section.

B. Notifications and Elections—Bid First Pilots

1. When the flying operations of the Company are to be reduced at any base station or stations on the system resulting in any reduction or loss of the bid statuses of pilots at any such base station or stations, all pilots to be affected thereby shall be given written notice by the Company by Registered Air Mail Letter, return receipt requested, or by Telegram, of such changes in status. Not later than fourteen (14) days after the date of postmark or the date of transmission of such notice, such Bid First Pilots shall give written notice to the Company by Registered Air Mail Letter or Telegram of their decision to exercise one of the following courses of action:

a. Revert to the status of Bid Copilot at present base station with Bid First Pilot reinstatement rights.

b. Displace the most junior Bid First Pilot other than the most junior Bid First Pilot on the system at any base station of their choice at pilot's expense.

c. Displace the most junior Bid First Pilot on the system at Company expense.

2. Any Bid First Pilot electing to exercise displacement rights may qualify such written election in order of preference on the applicable forms to be furnished by the Company

3. The elections of pilots desiring to exercise displacement rights shall be reviewed in the order of system seniority of such pilots but shall not be finally granted pending a review of the effect of the displacement rights of the Bid First Pilots described in subparagraph 4 of this paragraph.

4. When a Bid First Pilot is to be displaced as a result of the exercise of the displacement rights described in subparagraph 1 of this paragraph, he shall be given notice of such impending displacement by the Company as far in advance as is practicable by Registered Air Mail Letter, return receipt requested, or by Telegram and, not later than ten (10) days after date of postmark or transmission of such notice, he shall submit his elections to displace in the same manner and on the same forms as provided in subparagraph 1 of this paragraph.

5. Any Bid First Pilot displaced as a result of any of the displacement rights specified in subparagraphs 1 and 4 of this paragraph shall be notified of such impending displacement by the Company as far in advance as is practi-

cable by Registered Air Mail Letter, return receipt requested, or by Telegram and not later than seven (7) days after the date of postmark or date of transmission of such notice, shall give written notice to the Company by Air Mail Letter or Telegram of his decision to:

a. Revert to the status of Bid Copilot at his present base station with Bid First Pilot reinstatement rights.

b. Displace the most junior Bid First Pilot on the system.

6. Any Bid First Pilot exercising a displacement right in accordance with the provisions of this paragraph shall be governed by the following terms and conditions:

a. Any displacing Bid First Pilot must have greater system seniority than the Bid First Pilot that he displaces.

b. When the most junior Bid First Pilot on the system is displaced he shall revert to the status of Bid Copilot at his base station with Bid First Pilot reinstatement rights.

c. When the elections of all Bid First Pilots, in subparagraphs 1 and 4 of this paragraph have been reviewed, final notification shall be given those pilots successfully exercising their displacement rights and the base station at which such rights are to be exercised in accordance with their preference. All such pilots shall transfer to effect displacement, and may be required to report to their new base stations in accordance with all of the provisions of Section 23 G of this Agreement.

d. A pilot displacing the most junior Bid First Pilot on the system shall effect such displacement at Company expense. A pilot

displacing any other Bid First Pilot as provided herein shall effect such displacement at his own expense.

e. A Bid First Pilot successfully exercising displacement rights shall forthwith forfeit all reinstatement rights held at the time and prior to such displacement.

f. A pilot exercising displacement rights as provided herein shall be afforded the same opportunity to acquire route and equipment qualifications as is afforded a successful bidder.

g. A Bid First Pilot not submitting an election in the prescribed manner and within the prescribed time limits shall revert to Bid Copilot status at his base station with Bid First Pilot reinstatement rights.

C. Notification and Elections — Bid Copilots

1. When the flying operations of the Company are to be reduced at any base station or stations on the system resulting in any reduction or loss of the bid statuses of copilots at any such base station or stations, or when any Bid Copilot loses bid status as a result of the exercise of displacement rights by a Bid Pilot, all pilots to be affected thereby shall be given written notice by the Company by Registered Air Mail Letter, return receipt requested, or by Telegram, of such changes in status. Not later than fourteen (14) days after the date of postmark or the date of transmission of such notice, such Bid Copilots shall give written notice to the Company by Registered Air Mail Letter or Telegram of their decision to exercise one of the following courses of action:

a. Revert to the status of Non-Bid Pilot at present base station with Bid Copilot reinstatement rights.

b. Displace the most junior Bid Copilot other than the most junior Bid Copilot on the system at any base station of their choice at pilots expense.

c. Displace the most junior Bid Copilot on the system at Company expense.

2. Any Bid Copilot electing to exercise displacement rights may qualify such written election in order of preference on the applicable forms to be furnished by the Company.

3. The elections of pilots desiring to exercise displacement rights shall be reviewed in the order of system seniority of such pilots but shall not be finally granted pending a review of the effect of the displacement rights of the Bid Copilots described in subparagraph 4 of this paragraph.

4. When a Bid Copilot is to be displaced as a result of the exercise of displacement rights described in subparagraph 1 of this paragraph, he shall be given notice of such impending displacement by the Company as far in advance as practicable by Registered Air Mail Letter, return receipt requested, or by Telegram and, not later than ten (10) days after date of postmark or transmission of such notice, he shall submit his elections to displace in the same manner and on the same forms as provided in subparagraph 2 of this paragraph.

5. When a Bid Copilot is to be displaced as a result of the exercise of the displacement rights described in subparagraph 4 of this paragraph, he shall revert to the status of Non-Bid Pilot at his present base station with Bid Copilot reinstatement rights.

6. Any Bid Copilot exercising a displacement right in accordance with the provisions

of this paragraph shall be governed by the following terms and conditions:

a. Any displacing Bid Copilot must have greater system seniority than the Bid Copilot that he displaces.

b. When the most junior Bid Copilot on the system is displaced, he shall be covered under the provisions of paragraph 5 above.

c. When the elections of all Bid Copilots in subparagraphs 1 and 4 of this paragraph have been reviewed, final notification shall be given those pilots successfully exercising their displacement rights and the base station at which such rights are to be exercised in accordance with their preference. All such pilots shall transfer to effect displacement, and may be required to report to their new base stations in accordance with all of the provisions of Section 23 G of this Agreement.

d. A pilot displacing the most junior Bid Copilot on the system shall effect such displacement at Company expense. A pilot displacing any other Bid Copilot as provided herein shall effect such displacement at his own expense.

e. A Bid Copilot successfully exercising displacement rights shall forthwith forfeit all reinstatement rights held at the time and prior to such displacement.

f. A pilot exercising displacement rights as provided herein shall be afforded the same opportunity to acquire route and equipment qualifications as is afforded a successful bidder.

g. A Bid Copilot not submitting an election in the prescribed manner and within

the prescribed time limited shall be covered under the provisions of paragraph 5 above.

D. Preference in Transfer

1. All pilots not holding bid status will be permitted to express written preferences to the Company for any base station or stations on the system to which they desire to be transferred. The Company shall maintain a file containing all such written preferences submitted to them during the twelve (12) preceding months.

2. Preferences of Non-Bid Pilots shall be granted in the order of their system seniority and in the order of preference, provided that such preferences shall be honored only when such transfer contemplates the move from an overmanned base station to an undermanned based station.

3. a. When any base station is overmanned by reason of curtailment at any base station or stations on the system, and for thirty (30) days following such curtailment, any Non-Bid Pilot who expresses preference and is transferred to the nearest undermanned base station shall have his moving expenses paid by the Company. When the undermanned base station of his choice is a greater distance from his present base station than the nearest undermanned base station, such pilot will receive his moving expenses as provided in Section 12 less one-half (½) of his actual additional shipping expenses occasioned by the longer move.

b. At all other times Non-Bid Pilots granted transfers to base stations for which they have expressed written preference shall pay their own moving expenses.

4. When no Non-Bid Pilots have indicated written preferences for assignment to an undermanned base station, assignment will be made in reverse order of system seniority from the ranks of the Non-Bid Pilots at any overmanned base station or stations on the system.

5. All Non-Bid Pilots transferring from one base station to another shall be governed by the following terms and conditions:

a. A Non-Bid Pilot transferring by written preference shall forfeit all reinstatement rights held at the time and prior to the effective date of such transfer.

b. The moving expenses of a Non-Bid Pilot transferring by written preference shall be prorated on the basis of the most direct AAA mileage from point of origin to point of destination.

c. Non-Bid Pilots transferring by Company direction shall retain reinstatement rights to former base stations and status, and all moving expenses shall be paid by the Company.

d. All Non-Bid Pilots may be required to report to their new base stations in accordance with all of the provisions of Section 23 G of this Agreement.

6. Bid vacancies arising by reason of furlough need not be bulletined beyond the first step of the bidding procedure.

E. Closing of a Base Station — Moving Expenses for Pilots

1. The Company will announce the closing date of a base station at least three (3) months prior to the closing of the base station; provided that such notice shall not be required

when a base station is closed due to unforeseeable contingencies.

2. During the period between the announcement of closing and the closing of the base station, the total monthly flight time at the base station being closed will be maintained by the Company; provided that the maintenance of such time will not be required if the removal of such time is caused by circumstances beyond the reasonable control of the Company.

3. During the period between the announcement of closing and the closing of the base station, any Bid Pilot who exercises his seniority on a successful base station bid shall pay his moving expenses to his new station. The vacancy created at that base station by a Bid First Pilot bidding out shall be considered a short duration flying assignment, and shall be filled in accordance with the provisions set forth in Section 24 D 3 of this Agreement.

4. At least fourteen (14) days before the closing date of a base station, Bid Pilots will advise the Company of their election under subparagraphs 5, 6 or 7 below.

5. Any Bid Pilot who remains at the base station being closed to the date of closing shall be paid one-half (½) of his moving expense to the base station of his choice if he displaces the most junior Bid Pilot in his status other than the most junior Bid Pilot in his status on the system.

6. Any Bid Pilot who remains at the base station being closed to the date of closing and who displaces the most junior Bid Pilot in his Status on the system shall be moved at Company expense.

7. a. Bid Copilots who stay at the base to the date of closing shall have the right to revert to non-bid status.

b. Non-Bid Pilots as well as Bid Copilots who elect to revert to non-bid status and who remain at the base to the date of closing will advise the Company of their preferences under subparagraph D 3 above.

F. Method of Furloughing

Irrespective of any of the provisions of this Agreement, when a curtailment of the operations of the Company results in a lesser number of pilots employed by the Company, the most junior pilots on the system, irrespective of their status or any other right that has accrued to them, shall be furloughed in accordance with the reverse order of system seniority on the system. When a furloughed pilot is recalled and placed on active pilot status with the Company, he shall have no prior right or claim to any vacancy or vacancies that have been filled during the period of such furlough. Reinstatement rights, if any, of a furloughed pilot, shall not be exercisable while such pilot is on furlough and shall run concurrently with such furlough period or periods, provided that when a pilot returns to active service with the Company, any remaining part of his reinstatement rights shall again be in full force and effect, and exercisable.

G. Furloughed Pilots

A pilot furloughed by the Company due to a reduction in force shall continue to accrue seniority during the period of such furlough, provided that such accrual of seniority shall not continue beyond a period of five (5) consecutive years. Length of service for pay purposes shall not accrue during such period of furlough.

H. Method of Recall

All pilots furloughed from the Company shall file proper addresses with the Vice President-Flight of the Company at the time of furlough. Any changes in address must be supplied promptly to the Vice President-Flight of the Company. Such furloughed pilots shall be allowed a period of twenty-one (21) days to return to the service of the Company after date of postmark of reply requested Telegram or Cablegram, or Registered Air Mail Letter, return receipt requested, of his reassignment to duty with the Company, sent to the last address on file with the Vice President-Flight of the Company. A pilot shall not be entitled to preference in re-employment if he does not comply with the foregoing requirements. The Company may, at its discretion when extraordinary circumstances exist, extend such period of time for return to service, and shall notify the Association President at the time such extension is granted.

SECTION 26
PHYSICAL EXAMINATIONS

A. The purpose and object of any Company physical examination for a pilot shall be to diagnose the true and actual physical condition of the pilot, and the pilot or his duly designated personal physician will be furnished with an exact duplicate copy of all medical examiner's reports affecting him.

B. Physical standards for Company physical examinations will be those standards set forth in the F.A.A. Regulations as being required to maintain a first class F.A.A. Medical Certificate with waivers for Air Line Pilots. Physical examination procedures shall be determined by the Company.

C. Any information obtained by, or a result of, a Company physical examination shall be strictly confidential between the Company, the Company's doctor, and the pilot, and shall not be divulged to any other person without the written permision of the pilot.

D. A pilot shall not be required to submit to any Company physical examination in excess of two (2) in any twelve (12) month period without the pilot's consent, unless it is the Company's opinion that his health or physical condition is appreciably impaired, in which case the following procedure shall apply:

1. The Company shall notify the pilot in writing, specifying the nature and extent of its concern.

2. Any pilot hereunder who in the Company's opinion fails to pass a Company physical examination may within thirty (30) days, at his option, have a review of his case in the following manner.

a. He may employ a qualified medical examiner of his own choosing and at his own expense for the purpose of conducting a physical examination for the same purpose as the physical examination made by the medical examiner employed by the Company.

b. A copy of the findings of the medical examiner chosen by the employee shall be furnished to the Company, and in the event that such findings verify the finding of the medical examiner employed by the Company, no further medical review of the case shall be afforded.

c. In the event that the findings of the medical examiner chosen by the employee

shall disagree with the findings of the medical examiner employed by the Company, the Company will at written request of the employee ask that the two (2) medical examiners agree upon and appoint a third (3rd) qualified and disinterested medical examiner, preferably a specialist, for the purpose of making a further physical examination of the employee.

d. The said disinterested medical examiner shall then make a further examination of the pilot in question and the case shall be settled on the basis of his findings. The said disinterested medical examiner will be given a copy of the findings of the two physicians previously mentioned, prior to making his examination.

e. The expense of employing the disinterested medical examiner shall be borne one-half (½) by the pilot and one-half (½) by the Company. Exact duplicate copies of such medical examiner's report shall be furnished to the Company and to the pilot.

E. When a pilot is removed from flying status by the Company as a result of his failure to pass the Company's medical examination and appeals such action under the provisions of this section, he shall, if such action is proven to be unwarranted as provided in paragraph D of this section, be paid retroactively for all time lost in an amount which he would have ordinarily earned had he been continued on flight status during such period; providing further that in no case shall he be paid for a period in excess of ninety (90) days from the date of his removal from flight status.

SECTION 27
INVESTIGATION AND DISCIPLINE

A. Hearing

1. A pilot shall not be disciplined or dismissed from the service of the Company without notification in writing, of such action, nor without an investigation and hearing thereon, provided that such pilot makes written request for such investigation and hearing within ten (10) days after receiving such notification.

2. A pilot may be held out of service by the Company pending such investigation and hearing and appeals therefrom.

3. Such written request for an investigation and hearing shall be addressed to the pilot's immediate superior, with a copy thereof to the Vice President — Flight.

4. Prior to such investigation and hearing, such pilot shall be notified in writing by the Company of the precise charge or charges against him. He shall be given the necessary time, not exceeding ten (10) days, in which to secure the presence of witnesses and shall have the right to be represented by an employee of the Company of his choice or by his duly accredited representative or representatives.

5. Such investigation and hearing shall be held by the Manager — Flight under whose supervision the pilot falls, or his designated representative and shall be held within ten (10) days after the receipt of the pilot's written request therefor. For those pilots domiciled at the Maintenance Base at Tulsa, Oklahoma, such investigation and hearing shall be held by the Manager — Flight Test.

6. Within ten (10) days after close of such investigation and hearing the Company shall announce its decision in writing and shall furnish the pilot, or his duly accredited representative, a copy thereof.

B. Appeal

1. When a copy of such decision has been received by the pilot or his duly accredited representative or representatives, and if such pilot is dissatisfied with the Company's decision, he shall have the right of appeal to the Vice President—Flight, provided such appeal request is filed by the pilot in writing with the Vice President—Flight, within ten (10) days from the date such pilot receives a copy of the Company's decision of the first investigation and hearing provided in paragraph A of this Section. Such appeal hearing shall be held within ten (10) days after receipt of the pilot's written request therefor by the Vice President —Flight, or his designated representative.

2. Within ten (10) days after the close of such investigation and hearing, the Vice President—Flight or his designated representative shall announce his decision in writing and shall furnish the pilot, or his duly accredited representative or representatives, with a copy thereof.

C. General

1. If any decision made by the Company under the provisions of this Section is not appealed by the pilot affected within the time limit prescribed herein for such appeals, the decision of the Company shall become final and binding.

2. Nothing in this Agreement shall extend the right of investigation and hearing, stipu-

lated in paragraph A 1 of this Section, to a copilot during his first twelve (12) months of service as a copilot.

3. If, as a result of any hearing or appeal therefrom as provided herein, a pilot is exonerated, he shall, if he has been held out of service, be reinstated without loss of seniority and shall be paid for such time lost in an amount which he would have ordinarily earned had he been continued in service during such period.

4. If, as a result of any hearing or appeal therefrom as provided herein, the pilot shall be exonerated, the personnel record shall be cleared of the charges.

5. It is agreed by the parties hereto that the periods of time for hearings, decisions and appeals, established in this Section shall be considered as maximum periods and that when hearings, decisions and appeals can be handled in a period of less than the maximum time stipulated, every effort will be made so to expedite such cases.

6. When it is mutually agreed that a stenographic report is to be taken of the investigation and hearing in whole or in part, the cost will be borne equally by both parties to the dispute. In the event it is not mutually agreed that a stenographic report of the proceedings shall be taken, any written record available taken of such investigation and hearing shall be furnished to the other party to the dispute upon request, provided that the cost of such written record so requested shall be borne equally by both parties to the dispute.

7. After the appeal provisions hereinbefore provided have been complied with, further ap-

peal by the pilot, if made, shall be to the "American Airlines Pilots' System Board of Adjustment" as provided for in Section 29 of this Agreement, provided such appeal is made within thirty (30) days from the date of receipt by the pilot, or his duly accredited representative, of the decision of the Manager — Flight. All submissions to the System Board of Adjustment shall be made in conformity with paragraph (g) of Section 29 of this Agreement.

D. Pilots Acting As Witness or Representative

When, under the operation of this Agreement, a pilot hereunder is chosen to act as the representative of or a witness for another pilot against whom charges have been preferred, such pilot shall, when the requirements of the service permit, be given leave of absence for a time sufficient to permit him to appear as such representative or witness.

SECTION 28
GRIEVANCES

Any pilot, or group of pilots, hereunder, who have a grievance concerning any action of the Company affecting them shall be entitled to the same right of investigation and hearing and the same privileges concerning appeal as are accorded herein to individual pilots.

SECTION 29
SYSTEM BOARD OF ADJUSTMENT

A. Establishment

In compliance with Section 204, Title II, of the Railway Labor Act, as amended, there is

hereby established a system board of adjustment for the purpose of adjusting and deciding disputes which may arise under the terms of this Agreement and which are properly submitted to it, which board shall be known as "American Airlines Pilots' System Board of Adjustment," hereinafter referred to as the "Board".

B. Membership

The Board shall consist of four (4) members, two (2) of whom shall be selected and appointed by the Association and two (2) by the Company, and such appointees shall be known as "Adjustment Board Members".

C. Length of Service

The four (4) members shall serve for one (1) year from the date of their appointment or until their successors have been duly appointed. Vacancies in the membership of the Board shall be filled in the same manner as is provided herein for the selection and appointment of the original members of the Board.

D. Jurisdiction

The Board shall have jurisdiction over disputes between any employee covered by this Agreement and the Company growing out of grievances or out of interpretation or application of any of the terms of this Agreement. The jurisdiction of the Board shall not extend to proposed changes, in hours of employment, rates of compensation or working conditions covered by this Agreement.

E. Responsibility

The Board shall consider any dispute properly submitted to it by the President of the Association or by the Vice President—Flight of the Company, when such dispute has not been pre-

viously settled in accordance with the terms provided for in this Agreement.

F. Appointments

Appointments of members of the Board shall be made by the respective parties within thirty (30) days from the date of the signing of this Agreement and said appointees shall meet in the City of New York, New York, within forty-five (45) days from the date of the signing of this Agreement, and shall organize and select a Chairman and a Vice-Chairman, both of whom shall be members of the Board. The term of the office of Chairman and Vice-Chairman shall be one (1) year. Thereafter the Board shall designate one of its members to act as Chairman and one to act as Vice-Chairman for one (1) year terms. Each officer so selected shall serve for one (1) year and until his successor has been duly selected.

The office of Chairman shall be filled and held alternately by an Association member of the Board and by a Company member of the Board. When an Association member is Chairman a Company member shall be Vice-Chairman and vice-versa. The Chairman, or in his absence, the Vice-Chairman, shall preside at meetings of the Board and at hearings and shall have a vote in connection with all actions taken by the Board.

After the organization meeting referred to herein, the Board shall thereafter meet in the City where the general offices of American Airlines, Inc., are maintained (unless a different place of meeting is agreed upon by the Board) during the first week in April and the first week in October of each year provided that at such times there are cases filed with the Board for consideration, and shall continue in session until

all matters before it have been considered, unless otherwise mutually agreed upon.

G. Submission of Disputes

All disputes properly referred to the Board for consideration shall be addressed to the Chairman. Five (5) copies of each petition, including all papers and exhibits in connection therewith, shall be forwarded to the Chairman, who shall promptly transmit one (1) copy thereof to each member of the Board. Each case submitted shall show:

1. Question or questions at issue.
2. Statement of facts.
3. Position of employee or employees.
4. Position of Company.

When possible joint submissions should be made, but if the parties are unable to agree upon a joint submission then either party may submit the dispute and its position to the Board. No matter shall be considered by the Board which has not first been handled in accordance with the appeals provisions of this Agreement, including the rendering of a decision thereon by the Vice President—Flight of the Company.

H. Hearing

Upon receipt of notice of the submission of a dispute, the Chairman shall set a date for hearing which shall be at the time of the next regular meeting of the Board, or, if at least two (2) members of the Board consider the matter of sufficient urgency and importance, then at such earlier date and at such place as the Chairman and Vice-Chairman shall agree upon, but not more than fifteen (15) days after such request for meeting is made by at least two (2) of said members and the Chairman shall give the necessary notices in writing of such meeting to

the Board members and to the parties to the dispute.

I. Representation

Employees covered by this Agreement may be represented at Board hearings by such person or persons as they may choose and designate, and the Company may be represented by such person or persons as it may choose and designate. Evidence may be presented either orally or in writing or both.

On request of individual members of the Board, the Board may, by majority vote, or shall at the request of either the Association representatives or the Company representatives thereon, summon any witnesses who are employed by the Company and who may be deemed necessary by the parties to the dispute, or by either party, or by the Board itself, or by either group of representatives constituting the Board.

The number of witnesses summoned at any one time shall not be greater than the number which can be spared from the operation without interference with the services of the Company.

J Majority Vote

A majority vote of all members of the Board shall be competent to make a decision.

K. Decisions Final

Decisions of the Board in all cases properly referable to it shall be final and binding upon the parties hereto.

L. Deadlocks

When a deadlock occurs in a case properly submitted to the Board, it shall be the duty of the Board to endeavor to reach a decision, and failing in this, to endeavor to agree within thirty (30) days upon a procedure for breaking such

deadlock. In any case involving dismissal, disciplinary action, interpretation or application of any of the terms or provisions of this Agreement where the said System Board of Adjustment becomes deadlocked and is unable to reach a decision upon a method for breaking the deadlock within the above-prescribed thirty (30) days, either the Company or the Association may petition the National Mediation Board for the appointment of a neutral referee to sit with the System Board of Adjustment as a member thereof. Such Board of Adjustment, as then constituted shall consider the dispute pending before it, and a majority vote of the Board shall be final, binding, and conclusive upon the Company and the Association and anyone they may represent having an interest in the dispute. In case neither the Company nor the Association petitions the National Mediation Board within thirty (30) days after the thirty-day period prescribed in this paragraph for breaking deadlocks, the matter in question shall be deemed by all parties concerned to be ended and no action thereon shall be taken thereafter by either party.

M. Rights and Privileges Of Parties

Nothing herein shall be construed to limit, restrict or abridge the rights or privileges accorded either to the employees or to the employer, or to their duly accredited representatives, under the provisions of the Railway Labor Act, as amended, and the failure to decide a dispute under the procedure established herein shall not, therefore, serve to foreclose any subsequent rights which such law may afford or which may be established by the National Mediation Board by orders issued under such law with respect to disputes which are not decided under the procedure established herein.

N. Records

The Board shall maintain a complete record of all matters submitted to it for its consideration and of all findings and decisions made by it.

O. Expenses—Board Members

Each of the parties hereto will assume the compensation, travel expense and other expenses of the Board members selected by it.

P. Expenses—Witnesses

Each of the parties hereto will assume the compensation, travel expense and other expenses of the witnesses called or summoned by it. So far as space is available, witnesses who are employees of the Company shall receive free transportation over the lines of the Company from the point of duty or assignment to the point at which they must appear as witnesses and return, to the extent permitted by law.

Q. Other Expenses

The Chairman and Vice-Chairman, acting jointly, shall have the authority to incur such other expenses as in their judgment may be deemed necessary for the proper conduct of the business of the Board and such expense shall be borne one-half by each of the parties hereto. Board members who are employees of the Company shall be granted necessary leaves of absence for the performance of their duties as Board members. So far as space is available, Board members shall be furnished free transportation over the lines of the Company for the purpose of attending meetings of the Board to the extent permitted by law.

R. Freedom to Discharge Duties

It is understood and agreed that each and every Board member shall be free to discharge

his duty in an independent manner, without fear that his individual relations with the Company or with the employees may be affected in any manner by any action taken by him in good faith in his capacity as a Board member.

SECTION 30
GENERAL

A. Bulletin Board

The Company shall provide a glass covered bulletin board at each station where pilots are based for the posting of matters of Association business. Such posted material shall bear the signature of initials of the Local Domicile Chairman, and shall not contain anything of a defamatory or personal nature attacking individuals or groups.

B. Personnel File

An individual personnel file shall be maintained on each pilot in the employ of the Company, which shall contain all semi-annual progress reports and all written orders issued to him affecting a change of base station or status. Copies of all reports, orders, and all practice, training and flight checks shall be available for individual inspection by the pilot during regular business hours. A pilot shall be advised of any material of a critical or unfavorable nature at the time such material is placed in his personnel file.

C. Proficiency and Line Check Notification

The Company will post by at least fourteen (14) days in advance the names of all pilots due a proficiency or a line check.

D. Copies of Agreement

The Company shall provide each pilot with

a copy of this Agreement, printed and bound in a convenient pocket-size booklet.

E. No pilot shall be required to pay for the use of any Company equipment required for his training.

F. Abrogation of Rights

It is understood and agreed that the rights of any pilot covered by this Agreement shall not be abrogated in any way by the provisions of any other labor agreement, and no such pilot shall be permitted to accrue rights in abrogation of the terms of this Agreement.

G. Air Transportation

Pilots transferring from one base station to another shall be provided free transportation passes over the lines of the Company for themselves and members of their immediate family, subject to space available, to the extent permitted by law.

H. Orders to be in Writing

1. All orders to pilots involving a change in assignment of base stations, promotions, demotions, furloughs, and leaves of absence, shall be stated in writing, except that temporary assignment of reserve pilots as first pilots or co-pilots shall not be construed as requiring a written order other than the necessary flight forms.

2. All orders to pilots involving a change in assignment shall stipulate manner and amount of expenses, if any, in connection with such new assignment.

I. In the event a pilot's trip originates at one terminal and terminates at another terminal at

his regular home domicile, said pilot shall be furnished transportation one way between one terminal and the other at his option.

J. Group Insurance Contributions

Effective August 1, 1963, the Company will assume 30% of the cost of pilot (other than retirees and exclusive of optional insurance) only coverage under the Group Insurance Plan. Effective January 1, 1964, the Company will assume a total of 75% of such cost. Pilots who are members of the Plan on August 1, 1963 will be eligible for the above benefits as of that date. A pilot who joins the Plan after August 1, 1963 will become eligible for those benefits on January 1 and July 1 next following his entry into the Plan. The present rule relating to the taking of physical examinations will continue in effect.

Although it is the intention of American Airlines, Inc. to continue to make available to its Pilots a group insurance plan of a type similar to that which is now available to them, the Company will reserve the right to modify the Plan and/or pass on any increase in cost which is assessed against it by the insurance company.

SECTION 31
AMENDMENTS TO AGREEMENT

Either party hereto may at any time propose in writing to the other party any amendment which it may desire to make to this Agreement, and if such amendment is agreed to by both parties hereto, such amendment shall be stated in writing, signed by both parties and the amendment shall then be deemed to be incorporated in and shall become a part of this Agreement.

SECTION 32
EFFECT ON PRIOR AGREEMENTS

This Agreement shall supersede and take precedence over all Agreements, Supplemental Agreements, Amendments, Letters of Understanding and similar related documents executed between the Company and the collective bargaining representative of the pilots in the service of American Airlines, Inc. prior to the signing of this Agreement, except for the Letter of Agreement dated January 21, 1959 which Letter of Agreement shall be subject to the provisions of this Agreement and the related document which appears herein as Appendix H, provided that all rights and obligations, monetary or otherwise, which may have accrued because of services rendered prior to the effective dates of this Agreement shall be satisfied or discharged.

SECTION 33
DURATION

This Agreement shall become effective July 9, 1963 except as otherwise stated herein, and shall continue in full force and effect until July 8, 1965 and shall renew itself without change until each succeeding July 8th thereafter, unless written notice of intended change is served in accordance with Section 6, Title I of the Railway Labor Act, as amended, by either party hereto at least sixty (60) days prior to July 8, 1965 or July 8 of any subsequent year.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement this 9th day of July 1963.

WITNESS: FOR AMERICAN AIRLINES, INC.

James J. Lamond, Jr.

G. Marion Sadler
Vice President &
General Manager

E. J. Mahon

W. B. Whitacre
Vice President-Personnel

H. B. Benninghoff

A. Di Pasquale
Assistant Vice President—
Labor Relations

WITNESS: FOR THE AIR LINE PILOTS IN THE SERVICE OF AMERICAN AIRLINES, INC. as Represented by ~~ALLIED~~ PILOTS ASSOCIATION

Nicholas J. O'Connell, Jr.
President

J. R. Lyons
Robert T. Guba
Paul G. Atkins
Joseph P. Garvey
Ralph L. Harkenrider

APPENDIX A

JOINT UNDERSTANDING AS TO CERTAIN APPLICATIONS UNDER SECTION 21-C and E OF THE BASIC AGREEMENT BETWEEN THE PARTIES, EFFECTIVE JULY 9, 1963

IT IS MUTUALLY AGREED AS FOLLOWS:

1. Notwithstanding the provisions of Sections 21-C and 21-E of the Agreement between the parties effective July 9, 1963, it is understood and agreed that in the specific instance where a pilot is scheduled to fly from A to B, lay over, and then deadhead from B to A, and the layover has been scheduled because the Company cannot schedule the pilot to return to B within the first duty period due to the thirteen (13) hour limitation (as set forth in this Section 21), such pilot may request, under Section 21-C-3(d) that he be permitted to deadhead home in the first duty period, and the Company may if it chooses, permit him. However, he shall be paid and credited for the scheduled second duty period in lieu of the extension of the first duty period.

2. This understanding shall be deemed to be a part of the Basic Agreement, and, particularly, Section 21 thereof.

IN WITNESS WHEREOF, the parties hereto have signed this Joint Understanding this 9th day of July, 1963.

FOR AMERICAN AIRLINES, INC.

W. B. Whitacre

FOR ALLIED PILOTS ASSOCIATION

Nicholas J. O'Connell, Jr.

APPENDIX B

AGREEMENT BETWEEN AMERICAN AIRLINES, INC. AND THE AIR LINE PILOTS IN THE SERVICE OF AMERICAN AIRLINES, INC., AS REPRESENTED BY ALLIED PILOTS ASSOCIATION, COVERING THE ESTABLISHMENT AND PROCEDURES FOR ALLIED PILOTS ASSOCIATION REGULAR MEMBERSHIP DUES CHECK OFF.

IT IS MUTUALLY AGREED THAT:

A. The Company agrees to deduct from the monthly pay of each pilot employee and remit to the Allied Pilots Association membership dues uniformly levied (not including initiation fees, fines, penalties or assessments) in accordance with the Constitution and By-Laws of the Union and as prescribed by the Railway Labor Act, as amended, a monthly amount equal to the Union's regular and usual monthly dues, which monthly amount would be required to be paid by such pilot if a member, provided such pilot voluntarily executes the following agreed-upon form, known as the "Check-Off Form," which shall be prepared and furnished by the Allied Pilots Association.

ASSIGNMENT AND AUTHORIZATION FOR CHECK-OFF OF UNION DUES

ALLIED PILOTS ASSOCIATION

(Name of Organization)

To: American Airlines, Inc.
Attention: Manager-Payroll
633 Third Avenue
New York 17, N. Y.

I, ...,

(Print name, initials and surname)

hereby assign to Allied Pilots Association, my

Union dues from any wages earned or to be earned by me as your employee. I authorize and direct you to deduct from my pay each month the standard monthly Union dues, in the amount of one and one-half per cent (1½%) of my gross earnings (or such monthly dues as may hereafter be established in accordance with the Constitution and By-Laws of the Union as my membership dues).

This assignment, authorization, and direction may be revoked by me in writing at any time after the expiration of one year from the date hereof, or upon the termination date of the dues Check-Off Agreement between the Company and the Union, whichever occurs sooner.

This authorization and direction is made subject to the provisions of the Railway Labor Act, as amended, and in accordance with the Check-Off Agreement between the Union and the Company.

Signature of Employee.....

Employee No. .....

Station .....

Dated: .....

B. All Check-Off forms will be submitted through the SECRETARY-TREASURER of ALLIED PILOTS ASSOCIATION who will forward the original signed copy to the Manager-Payroll of the Company, care of American Airlines, Inc., 633 Third Avenue, New York 17, N. Y. A properly executed Check-Off form, filed before the 15th of any month will become effective the 1st of the month following its receipt by the

Manager-Payroll of the Company. Illegible or improperly executed forms will be returned to the said Secretary-Treasurer of the Allied Pilots Association.

C. Any notice of revocation as set forth in the Check-Off Form must be in writing, signed by the pilot, and delivered by registered mail, addressed to the Manager-Payroll of the Company, with copy to the Secretary-Treasurer of the Allied Pilots Association. Check-Off Forms and notices so received by the Company will be stamp-dated on the date received and will constitute notice to the Company on the date received and not when mailed.

D. The Company will remit to the Allied Pilots Association a check in payment of all dues collected each month, as soon as possible after the payday on which deduction was made. These remittances will be subject to normal accounting practice with respect to adjustments necessary because of the methods involved in the deduction procedure. The Company remittance of Union membership dues to the Union will be accompanied by a list of names, employee numbers, station numbers and amounts of deductions of the pilots for whom deductions have been made in that particular month, arranged in order of their employee numbers.

E. 1. No deductions of Union dues will be made from the wages of any pilot who has executed a Check-Off Form and who has been transferred to a job not covered by the existing Basic Agreement entered into by the parties, or who is transferred to supervisory duties, or who is on leave without pay. Upon return to work as a line pilot, deductions will be automatically resumed as heretofore, provided the

pilot has not revoked the assignment in accordance with this Agreement, and provided it is in accordance with the other appropriate provisions of this Agreement and of the Railway Labor Act, as amended.

2. A pilot who has executed a Check-Off Form and who resigns or is otherwise terminated from the employ of the Company shall be deemed to have automatically revoked his assignment and if he is recalled or reemployed, further deductions of Union dues will be made only upon execution and receipt of a new Check-Off Form.

F. Collection of any back dues owed at the time of starting deductions for any pilot, and collection of dues missed because the pilot's earnings were not sufficient to cover the payment of dues in the specific pay period, and collection of dues missed because of accidental errors in the accounting procedures, will be the responsibility of the Union and will not be subject of payroll deductions, and the Company shall not be responsible in any way because of such missed collections.

G. Deductions of membership dues shall be made from the end of the month paycheck on the basis of one and one-half percent (1½%) of gross earnings, provided there is a balance in such paycheck sufficient to cover the amount after all other deductions authorized by the employee or required by law have been satisfied. In the event of termination of employment, the obligation of the Company to collect dues shall not extend beyond the month in which the pilot's last day of work occurs.

H. In cases where a deduction is made which duplicates a payment already made to the Union by a pilot, and where a deduction is not in conformity with the provisions of the Union Constitution and By-Laws, refunds to the pilot will be made by the Union.

I. American Airlines, Inc. shall not be held liable for any claims which may be made by the pilots by virtue of the wrongful (other than willful) application or misapplication of any of the terms herein.

J. This Agreement shall become effective July 9, 1963 and shall be deemed to be a part of the Basic Agreement and shall continue in full force and effect in accordance with the provisions set forth in Section 33 of the Basic Agreement, effective July 9, 1963.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement this 9th day of July, 1963.

WITNESS: FOR AMERICAN AIRLINES, INC.

James J. Lamond, Jr.

G. Marion Sadler
Vice President &
General Manager

E. J. Mahon

W. B. Whitacre
Vice President-Personnel

H. B. Benninghoff

A. Di Pasquale
Assistant Vice President
Labor Relations

WITNESS: FOR THE AIR LINE PILOTS IN THE SERVICE OF AMERICAN AIRLINES, INC. as Represented by ALLIED PILOTS ASSOCIATION

Nicholas J. O'Connell, Jr.
President

J. R. Lyons
Robert T. Guba
Paul G. Atkins
Joseph P. Garvey
Ralph L. Harkenrider

APPENDIX C

SUPPLEMENTAL AGREEMENT
between
AMERICAN AIRLINES, INC.
and
THE AIR LINE PILOTS
in the service of
AMERICAN AIRLINES, INC.
as represented by
ALLIED PILOTS ASSOCIATION

THIS SUPPLEMENTAL AGREEMENT is made and entered into in accordance with the provisions of the Railway Labor Act, as amended, by and between AMERICAN AIRLINES, INC. (hereinafter known as the "Company") and the Air Line Pilots in the service of AMERICAN AIRLINES, INC. as represented by the ALLIED PILOTS ASSOCIATION, (hereinafter known as the "Association").

WHEREAS, the Company and the Association have entered into an agreement setting forth certain understandings for the conversion from four-man to three-man cockpit crews on turbo-jet aircraft, and

WHEREAS, such conversion shall be effected in accordance with the timetable specified in the Supplemental Agreement effective July 9, 1963, covering an implementation schedule for certain provisions of the Basic Agreement,

IT IS MUTUALLY UNDERSTOOD AND AGREED:

A. Furlough Protection

1. No pilot whose name appears on the Pilots' System Seniority List as of July 1, 1963 shall be furloughed who, were it not for the con-

version from four-man to three-man cockpit crews on turbojet aircraft, would have continued in the active employ of the Company. In applying this criteria, the system manning requirements at that time will be determined on the basis of operation of turbojet aircraft with four-man crews as required by the Second Officer Memorandum of Understanding.

2. The Company's right to furlough pilots for other reasons than that set forth in subparagraph 1 above shall remain unaffected by this Supplemental Agreement. "Other reasons" as used herein shall include but not be limited to such reasons as an Act of God, a National Emergency, revocation of the Company's operating certificate or certificates, grounding of a substantial number of the Company's aircraft, any strike causing a temporary cessation of work.

B. Pay Protection

1. No pilot whose name appears on the Pilots' System Seniority List as of July 1, 1963, shall suffer any reduction in earnings as the result of the transition to and operation of three-man cockpit crews rather than four-man cockpit crews in turbojet aircraft operated by the Company subject to the following limitations:

a. During the period between October 1, 1963 and March 1, 1964, the senior pilot who is eligible for pay protection under these provisions shall be that pilot who concurrent with the abolition of Second Officer flying assignments on turbojet aircraft loses Bid Copilot status.

b. During that period between March 2, 1964 and March 31, 1964, the senior pilot who is eligible for pay protection under these

provisions shall be that pilot who lost Bid Copilot status on October 1, 1963 or November 1, 1963 and who on March 2, 1964 failed to regain such Bid Copilot status.

c. Effective April 1, 1964 and continuing thereafter, the senior pilot who is eligible for pay protection under these provisions shall be that pilot who lost Bid Copilot status on October 1, 1963 or subsequent to that and who has failed to regain such Bid Copilot status.

d. The senior pilot, as defined in paragraphs a, b and c above, and each pilot junior to such pilot shall be entitled to monthly pay protection. Under this provision a pilot's monthly pay protection shall be equal to 93% of the weighted average of his monthly gross earnings in the sixth month period preceding the effective date of this Agreement, provided that if such pilot selects and is awarded a trip selection which, on the basis of scheduled flight time plus applicable credited time, produces a lower gross pay than the highest paying selection to which such pilot's seniority would entitle him, his guarantee shall be reduced by the dollar difference between the two selections.

2. Claims or grievances arising under the provisions of this paragraph B shall be processed in the same manner as other grievances may be processed under the provisions of the basic Agreement, except that claims arising under this paragraph B shall be presented to the Company within thirty (30) days from the date on which the pilot receives the paycheck on the basis of which he believes he has been unjustly dealt with in terms of the pay protection set forth in this paragraph B.

C. In the event a pilot is furloughed during the term of the basic Agreement, and he alleges that the furlough is in violation of the applicable provisions of this Supplemental Agreement, the furlough may be protested by an accredited representative of the Association on behalf of such pilot or pilots in accordance with the procedure set forth in paragraph D below. In such an instance, the burden of proof shall be on the Company.

D. 1. A protest pursuant to paragraph C shall be in writing and made within ten (10) days after the date of the notice of furlough.

2. The protest shall be submitted to the Company's Vice President — Flight, or his designated representative, and a reply shall be issued within five (5) days after receipt of the written protest. If the reply is not satisfactory, the matter may be appealed forthwith to the Special Board of Adjustment created herein for such purpose. If the matter is not so appealed within ten (10) days after the date of receipt by the pilot of the written reply issued by the Vice President—Flight, the protest shall be conclusively deemed withdrawn, and may not be resubmitted.

3. The Special Board of Adjustment shall consist of three (3) members: one appointed by the Company, one appointed by the Association President and Professor Russel A. Smith as Chairman. The jurisdiction of the Special Board of Adjustment shall be limited to claims arising under paragraphs A and C of this Supplemental Agreement, and the Board shall hear the evidence presented by the parties with respect to such claims.

4. The Special Board of Adjustment shall meet in New York as soon as feasible and no

later than thirty (30) days after it is notified that a case or cases have been submitted to it for consideration. A majority vote of the Board shall be competent to make a decision, and such decision shall be final and binding upon the parties, including the pilot or pilots involved. The Board's opinion and decision shall be in writing. The expenses of the Board, including the compensation of the Chairman, will be shared equally by the Company and the Association. A stenographic record will be taken if requested by either party to the dispute, and the expense of such record shall be borne equally by the Company and the Association.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement this 9th day of July, 1963.

WITNESS: FOR AMERICAN AIRLINES, INC.

James J. Lamond, Jr.

G. Marion Sadler
Vice President &
General Manager

E. J. Mahon

W. B. Whitacre
Vice President-Personnel

H. B. Benninghoff

A. Di Pasquale
Assistant Vice President
Labor Relations

WITNESS: FOR THE AIR LINE PILOTS IN THE SERVICE OF AMERICAN AIRLINES, INC. as Represented by ALLIED PILOTS ASSOCIATION

J. R. Lyons
Robert T. Guba
Paul G. Atkins
Joseph P. Garvey
Ralph L. Harkenrider

Nicholas J. O'Connell, Jr.
President

APPENDIX D

SUPPLEMENTAL AGREEMENT
between
AMERICAN AIRLINES, INC.
and
THE AIR LINE PILOTS
in the service of
AMERICAN AIRLINES, INC.
as represented by
ALLIED PILOTS ASSOCIATION
covering
AN IMPLEMENTATION SCHEDULE FOR CERTAIN PROVISIONS OF THE BASIC AGREEMENT

THIS SUPPLEMENTAL AGREEMENT is made and entered into in accordance with the provisions of the Railway Labor Act, as amended, by and between AMERICAN AIRLINES, INC. (hereinafter known as the "Company") and the AIR LINE PILOTS in the service of AMERICAN AIRLINES, INC., as represented by ALLIED PILOTS ASSOCIATION (hereinafter known as the "Association").

WHEREAS, the Company and the Association have entered into an Agreement setting forth wages, rules and working conditions to be effective July 9, 1963, and

WHEREAS, certain new provisons relating to reduced flight time limitations, increased flight time credit provisions, on-duty and off-duty provisions, base bidding and vacation provisions require the training of additional pilots before such provisions can be implemented,

IT IS MUTUALLY AGREED AND UNDERSTOOD:

1. The increased vacation benefits afforded the

pilots under Section 13 shall become available to such pilots on January 1, 1964.

2. The provisions of Section 21A shall become effective on August 1, 1963 with the following exceptions:

a. From August 1, 1963 through November 30, 1963 eighty-five (85) credited hours shall constitute the monthly maximum for pilots on all aircraft, except that effective October 1, 1963 eighty (80) credited hours shall constitute the monthly maximum for pilots on Convair 990 aircraft, and effective November 1, 1963 eighty (80) credited hours shall constitute the monthly maximum for pilots on Boeing 707 aircraft.

b. From December 1, 1963 through March 1, 1964 eighty (80) credited hours shall constitute the monthly maximum for pilots on all aircraft.

3. The new provisions of Section 21D of the Agreement shall become effective for jet pilots on November 1, 1963 and for propeller pilots on December 1, 1963.

4. The provisions of Section 21C shall become effective on July 9, 1963 except that the new reduced duty time limitations shall become effective September 1, 1963.

5. The provisions of Section 21-E, 21-F, 21-G, 21-H and 21-I of the Agreemnt shall become effective no later than April 1, 1964. In the month of February, 1964, representatives of the pilots shall meet with the Company for purposes of determining if an earlier implementation date can be agreed upon for these sections. The provisions of Sections 8, 21-E and 21-F of the Basic Agreement dated January 21, 1959, as amended, and related documents, shall continue in

effect for first pilots and copilots until replaced by the new provisions of the Basic Agreement as set forth above.

6. The new provisions of Section 23L and 23M of the Agreement shall become effective on November 1, 1963, except that for the period November 1, 1963 through March 1, 1964, the monthly maximums set forth in paragraph 2. above shall be used in determining first pilot and copilot base bids on all equipment.

7. The new provisions of Sections 7; 10E, 11 and 23N shall become effective on August 1, 1963.

8. Except as otherwise provided in the Basic Agreement and except as otherwise provided in the Supplemental Agreement covering interim rates of pay, all provisions of the Agreement not specifically excepted in this Supplemental Agreement shall become effective on July 9, 1963.

9. In order to facilitate implementation of the reduced flight time limitations and increased flight time credit provisions of the Basic Agreement, the Company shall:

a. As soon as practicable and prior to September 1, 1963, publish to all pilots the distribution of flight time (including credited time) and the resultant base bids and manning requirements as it is estimated they will exist on December 1, 1963, March 2, 1964 and April 1, 1964.

b. At required intervals proffer prospective base vacancies in all pilot categories to be effective three (3) months after the date of proffer. Such base bids shall be predicated on the estimated scheduled flight time and estimated flight time credit to be allocated to each crew base in the months for which they are to be

effective. Pilots who are awarded such prospective base bids shall, as soon as is practicable, undergo such equipment training as may be necessary in order to qualify for flying in accordance with their seniority at their respective new bases, but base transfers shall not be effective until the month for which they are proffered.

This Supplemental Agreement shall become effective on July 9, 1963, shall run concurrently with the Basic Agreement effective July 9, 1963 and be subject to the provisions of Section 33 thereof.

IN WITNESS WHEREOF, the parties hereto have signed this Supplemental Agreement this 9th day of July, 1963.

WITNESS: FOR AMERICAN AIRLINES, INC.

James J. Lamond, Jr.

G. Marion Sadler
Vice President &
General Manager

E. J. Mahon

W. B. Whitacre
Vice President-Personnel

H. B. Benninghoff

A. Di Pasquale
Assistant Vice President
Labor Relations

WITNESS: FOR THE AIR LINE PILOTS IN THE SERVICE OF AMERICAN AIRLINES, INC. as Represented by ALLIED PILOTS ASSOCIATION

J. R. Lyons
Robert T. Guba
Paul G. Atkins
Joseph P. Garvey
Ralph L. Harkenrider

Nicholas J. O'Connell, Jr.
President

APPENDIX E

SUPPLEMENTAL AGREEMENT
between
AMERICAN AIRLINES, INC.
and
THE AIR LINE PILOTS
in the service of
AMERICAN AIRLINES, INC.
as represented by
ALLIED PILOTS ASSOCIATION
covering
INTERIM RATES OF PAY

THIS SUPPLEMENTAL AGREEMENT is made and entered into in accordance with the provisions of the Railway Labor Act, as amended, by and between AMERICAN AIRLINES, INC. (hereinafter known as the "Company") and the AIR LINE PILOTS in the service of AMERICAN AIRLINES, INC., as represented by ALLIED PILOTS ASSOCIATION (hereinafter known as the "Association").

WHEREAS, the Company and the Association have entered into an Agreement setting forth wages, rules and working conditions to be effective July 9, 1963, and

WHEREAS, certain provisions of this Agreement are contingent upon conversion from four-man to three-man cockpit crews on turbojet aircraft and a phased reduction of flight time limitations,

IT IS MUTUALLY AGREED AND UNDERSTOOD:

1. Effective August 1, 1963, during the period that all pilots shall be operating under an eighty-five (85) hour monthly flight time limitation, the following rates of pay shall be applicable to the pilots in the categories indicated:

DAY FLYING

Year of Svc.	707B	CV-990	720B	L-188	DC-7B	DC-7	DC-6B	DC-6
2	26.4640	26.1292	25.7944	20.2795	19.1356	19.0612	17.2663	16.9687
3	26.6500	26.3152	25.9804	20.4655	19.3216	19.2472	17.4523	17.1547
4	26.8267	26.4919	26.1571	20.6422	19.4983	19.4239	17.6290	17.3314
5	27.0127	26.6779	26.3431	20.8282	19.6843	19.6099	17.8150	17.5174
6	27.1894	26.8546	26.5198	21.0049	19.8610	19.7866	17.9917	17.6941
7	27.3754	27.0406	26.7058	21.1909	20.0470	19.9726	18.1777	17.8801
8	27.5521	27.2173	26.8825	21.3676	20.2237	20.1493	18.3544	18.0568
9	27.7381	27.4033	27.0685	21.5536	20.4097	20.3353	18.5404	18.2428

NIGHT FLYING

Year of Svc.	707B	CV-990	720B	L-188	DC-7B	DC-7	DC-6B	DC-6
2	28.9640	28.6292	28.2944	22.7795	21.6356	21.5612	19.7663	19.4687
3	29.1500	28.8152	28.4804	22.9655	21.8216	21.7472	19.9523	19.6547
4	29.3267	28.9919	28.6571	23.1422	21.9983	21.9239	20.1290	19.8314
5	29.5127	29.1779	28.8431	23.3282	22.1843	22.1099	20.3150	20.0174
6	29.6894	29.3546	29.0198	23.5049	22.3610	22.2866	20.4917	20.1941
7	29.8754	29.5406	29.2058	23.6909	22.5470	22.4726	20.6777	20.3801
8	30.0521	29.7173	29.3825	23.8676	22.7237	22.6493	20.8544	20.5568
9	30.2381	29.9033	29.5685	24.0536	22.9097	22.8353	21.0404	20.7428

B. Copilots

DAY FLYING

Year of Svc.	707B	CV-990	720B	L-188	DC-7B	DC-7	DC-6B	DC-6
2	13.2320	13.0646	12.8972	10.1398	9.5678	9.5306	8.6332	8.4844
3	15.9900	15.7891	15.5882	12.2793	11.5930	11.5483	10.4714	10.2928
4	16.3643	16.1601	15.9558	12.5917	11.8940	11.8486	10.7537	10.5722
5	16.7479	16.5403	16.3327	12.9135	12.2043	12.1581	11.0453	10.8608
6	17.1293	16.9184	16.7075	13.2331	12.5124	12.4656	11.3348	11.1473
7	17.5203	17.3060	17.0917	13.5622	12.8301	12.7825	11.6337	11.4433
8	17.9089	17.6912	17.4736	13.8889	13.1454	13.0970	11.9304	11.7369
9	18.3071	18.0862	17.8652	14.2254	13.4704	13.4213	12.2367	12.0402

NIGHT FLYING

Year of Svc.	707B	CV-990	720B	L-188	DC-7B	DC-7	DC-6B	DC-6
2	14.4820	14.3146	14.1472	11.3898	10.8178	10.7806	9.8832	9.7344
3	17.4900	17.2891	17.0882	13.7793	13.0930	13.0483	11.9714	11.7928
4	17.8893	17.6851	17.4808	14.1167	13.4190	13.3736	12.2787	12.0972
5	18.2979	18.0903	17.8827	14.4635	13.7543	13.7081	12.5953	12.4108
6	18.7043	18.4934	18.2825	14.8081	14.0874	14.0406	12.9098	12.7223
7	19.1208	18.9060	18.6917	15.1622	14.4301	14.3825	13.2337	13.0433
8	19.5339	19.3162	19.0986	15.5139	14.7704	14.7220	13.5554	13.3619
9	19.9571	19.7362	19.5152	15.8754	15.1204	15.0713	13.8867	13.6902

2. During the period that Jet Pilots will be operating under an eighty (80) hour monthly flight time limitation, the following will apply:

a. First Pilot — Jet Equipment

Years of Svc.	707-123B Day	707-123B Night	707-720B Day	707-720B Night	CV-990 Day	CV-990 Night
2	28.1961	30.6961	27.4847	29.9847	27.8404	30.3404
3	28.3938	30.8938	27.6823	30.1823	28.0380	30.5380
4	28.5815	31.0815	27.8700	30.3700	28.2258	30.7258
5	28.7791	31.2791	28.0677	30.5677	28.4234	30.9234
6	28.9669	31.4669	28.2554	30.7554	28.6111	31.1111
7	29.1645	31.6645	28.4530	30.9530	28.8088	31.3088
8	29.3522	31.8522	28.6408	31.1408	28.9965	31.4965
9	29.5499	32.0499	28.8384	31.3384	29.1941	31.6941

b. Copilot — Jet Equipment

Years of Svc.	●707-123B Day	●707-123B Night	707-720B Day	707-720B Night	CV-990 Day	CV-990 Night
2	14.0981	15.3481	13.7424	14.9924	13.9202	15.1702
3	17.0363	18.5365	16.6094	18.1094	16.8228	18.3228
4	17.4347	18.9597	17.0007	18.5257	17.2177	18.7427
5	17.8430	19.3930	17.4020	18.9520	17.6225	19.1725
6	18.2491	19.8241	17.8009	19.3759	18.0250	19.6000
7	18.6653	20.2653	18.2099	19.8099	18.4376	20.0376
8	19.0789	20.7039	18.2415	20.2415	18.8477	20.4727
9	19.5029	21.1529	19.6833	20.6833	19.2681	20.9181

3. Effective December 1, 1963, the provisions of Sections 4 and 5 and the pegged speeds set forth in Section 9B-1 of the Basic Agreement shall apply to First Pilots and Copilots on propeller equipment only.

4. Effective March 2, 1964, the provisions of Sections 4 and 5 and the pegged speed provisions of Section 9B 1 shall apply to all pilots.

This Supplemental Agreement shall become effective on July 9, 1963, and shall run concurrently with the Basic Agreement effective July 9, 1963, and be subject to the provisions of Section 33 thereof.

IN WITNESS WHEREOF, the parties hereto have signed this Supplemental Agreement, this 9th day of July, 1963.

WITNESS: FOR AMERICAN AIRLINES, INC.

James J. Lamond, Jr.
G. Marion Sadler
Vice President &
General Manager

E. J. Mahon
W. B. Whitacre
Vice President-Personnel

H. B. Benninghoff
A. Di Pasquale
Assistant Vice President
Labor Relations

WITNESS: FOR THE AIR LINE PILOTS IN THE SERVICE OF AMERICAN AIRLINES, INC. as Represented by ALLIED PILOTS ASSOCIATION

J. R. Lyons
Robert T. Guba
Paul G. Atkins
Joseph P. Garvey
Ralph L. Harkenrider
Nicholas J. O'Connell, Jr.
President

APPENDIX F

AMERICAN AIRLINES, INC.
633 Third Avenue
New York 17, New York

July 9, 1963

Mr. N. J. O'Connell, President
Allied Pilots Association
114 East 40 St.
New York 16, N. Y.

Dear Mr. O'Connell:

This will confirm our commitment on the revisions and amendments which will be made to the Pilot Plan effective as of the first calendar day of the first month following the date of signing of the basic Agreement so as to effect an improved Retirement Plan for Pilots:

1. The Company shall assume the Pilot employee's contributions of 3% of his Rate of Compensation towards basic retirement annuities. Further, the Company shall assume the Pilot employee's contribution of 4% of his Rate of Compensation to the variable annuity trust. The Company shall contribute an additional 2% of a Pilot employee's Rate of Compensation to the variable annuity trust, making a total contribution of 10% of a Pilot employee's Rate of Compensation to the variable annuity trust.

2. A Pilot employee who became a member of the Pilot Plan as of January 1, 1956, and remains a member to his Normal Retirement Date shall be entitled to a Normal Form benefit of a minimum of $600 per month (exclusive of Social Security Benefits and benefits due to Optional Contributions) at his Normal Retirement Date. A Pilot employee who becomes a member of the Pilot

Plan after January 1, 1956, and who retires after completing 240 months of membership in the Pilot Plan (computed from his date of membership in the Pilot Plan after January 1, 1956) shall be entitled to a normal form benefit of a minimum of $600 per month (exclusive of Social Security Benefits and benefits due to Optional Contributions) payable at Normal Retirement Date. If the Pilot employee has not completed 240 months of membership in the Pilot Plan, the $600 monthly minimum shall be reduced by applying the ratio of his actual months of completed membership in the Pilot Plan (computed from his date of membership in the Pilot Plan after January 1, 1956) to 240.

3. a. A Pilot employee who was a member of the Pilot Plan as of January 1, 1956, and who is eligible to retire early under that Pilot Plan and who so retires for reasons other than medical inability to continue as a Pilot employee, providing he has 240 months of membership computed from his date of membership in the Plan, shall receive the larger of his accrued pension or a normal benefit of a minimum of $600 per month (exclusive of Social Security Benefits and benefits due to Optional Contributions). Such amount shall be actuarially reduced. If such Pilot employee does not have 240 months of membership as of his early retirement date, the $600 minimum shall first be reduced by applying the ratio of his actual months of membership in the Plan to 240.

A Pilot employee who joined the Pilot Plan after January 1, 1956 and who is eligible to

retire early under that Pilot Plan and who so retires for reasons other than medical inability to continue as a Pilot employee, shall receive the larger of his accrued pension or the minimum provided for such Pilot employee in paragraph 2 hereof. Such amount shall be actuarially reduced.

b. A Pilot employee who is a member of the Pilot Plan and who is eligible to retire early under that Plan and who so retires because he is medically unable to continue as a Pilot employee, shall receive a normal form benefit equal to the larger of his accrued pension or $600 (exclusive of Social Security Benefits and benefits due to Optional Contributions). Such amount shall be reduced in accordance with the table set forth below. In the event the Pilot employee continues as an employee with the Company in another capacity all retirement benefits shall be deferred until his actual retirement.

Age	Percentage of Pension Payable under 3 (b)
60	100%
59	97
58	94
57	91
56	88
55	85
54	80
53	75
52	70
51	65
50	60

Note: In calculating pensions at intermediate ages between 50 and 60, an adjustment is made to allow for completed months.

c. Should a dispute arise in determining whether a Pilot employee is medically unable to continue as a Pilot for the Company, it shall be settled in accordance with the procedures established under Section 26 of the Agreement dated January 21, 1959 between the bargaining representative of the pilot union and the Company. In no event shall the pension payable under this paragraph 3(b) be applicable where the disability is:

i. Result of war, or any act of war, whether war is declared or not, or by any act of international armed conflict involving armed forces of any international authority.

ii. Resulted from or consists of habitual drunkenness or addiction to narcotics, or was contracted suffered or incurred while the Member was engaged in, or resulted from his having engaged in, a criminal enterprise, or was intentionally self-inflicted.

4. In the event a Pilot employee dies after reaching his 50th birthday and before the effective date of commencement of retirement benefits, the designated beneficiary of the Pilot employee shall receive a monthly pension equal to the monthly pension benefit the Pilot employee would have received as though he retired early and elected a 2/3 joint annuitant option as of the date of his death.

5. For purposes of benefits payable on termination of membership or death prior to age 50, a Pilot employee shall have cash vesting in:

a. An amount equal to 4% of his Rate of Compensation under the basic retirement annuity portion of the Plan, and,
b. The dollar value of units attributable to a contribution of 4% of his Rate of Compensation in the variable annuity trust.

Such cash vesting as set forth above shall be for service in the Pilot Plan after the first day of the calendar month following the date of the signing of the Agreement pertaining to current negotiations.

6. A Pilot employee may make optional additional contributions to the variable annuity trust in even multiples of 1% but not in excess of 7% of his Rate of Compensation. A Pilot employee may elect to change his rate of optional contributions once during any twelve-month period. The change in his rate of optional contributions shall be effective on the following July 1st.

The Company shall not be required to match such optional contributions nor shall any pension attributable to optional contributions be used in the determination of any minimum benefit hereunder.

7. The above items requiring a minimum benefit to be paid shall be effective for those pilots retiring after February 1, 1961, as of the effective date of the commencement of their benefits.

8. A Pilot employee who was a member of the Pilot Plan as it existed as of the day before the effective date of signing of the Agreement pertaining to current negotiations shall not lose any accrued rights as a result of these amendments.

9. Amendments to the Pilot Plan shall become effective upon approval by the Internal Revenue Service. In the event that the Pilot Plan as amended has not been approved within four (4) months, the parties will meet promptly in an attempt to make such changes as are necessary to obtain such approval. In the event that such approval has not been obtained within six (6) months, the pay sections of the basic Agreement between the parties shall be open for amendment.

10. For pilots who retire after July 9, 1963 due to medical disability, the following applies in lieu of paragraph 3 b. above:

"A Pilot employee who retires because he is medically unable to continue as a Pilot employee shall receive a normal form benefit equal to the larger of his accrued pension or $600 (exclusive of Social Security Benefits and benefits due to optional contributions), provided he has had 180 months of continuous participation in the Plan preceding his involuntary retirement. In the event the Pilot employee continues as an employee with the Company in another capacity, all retirement benefits shall be deferred until his actual retirement."

Very truly yours,

W. B. Whitacre
Vice President-Personnel

APPENDIX G

AMERICAN AIRLINES, INC.
633 Third Avenue
New York 17, New York

Mr. N. J. O'Connell, Jr.
President, Allied Pilots Association
114 East 40th Street
New York 16, New York

Dear Mr. O'Connell:

In the negotiations which led to the signing of the Basic Agreement between the parties effective July 9, 1963, your committee expressed interest in turbojet aircraft which might be purchased by the Company and placed into operation at some future date, which aircraft would be below 80,000 pounds maximum certificated gross weight.

In resolving the crew complement matter with respect to the turbojet aircraft in excess of 80,000 pounds maximum certificated gross weight, you made clear to us that such settlement was to be deemed without prejudice to whatever position the pilots might take in the future with respect to crew complement composition of any turbojet aircraft operated by the Company, which turbojet aircraft would be under 80,000 pounds maximum certificated gross weight.

In the same discussion, the Company has made equally clear that it does not waive any claims or rights it may have under applicable government laws or regulations, or otherwise, with respect to any aircraft whose maximum certificated gross weight is under 80,000 pounds or the crew complement composition thereof.

If this is a fair statement of the expressions conveyed to each other during discussions leading to the Agreement effective July 9, 1963, it would be appreciated if you signify your understanding by signing in the space on the left-hand side of this page.

Very truly yours,

/S/ W. B. Whitacre

W. B. Whitacre
Vice President — Personnel

/S/ Nicholas J. O'Connell, Jr.

Nicholas J. O'Connell, Jr.
President, Allied Pilots Association

Dated: July 9, 1963

APPENDIX H

SUPPLEMENTAL AGREEMENT
between
AMERICAN AIRLINES, INC.
and
THE AIR LINE PILOTS
in the service of
AMERICAN AIRLINES, INC.
as represented by
ALLIED PILOTS ASSOCIATION
covering
COPILOTS SERVING AS SECOND OFFICERS

THIS SUPPLEMENTAL AGREEMENT is made and entered into in accordance with the provisions of the Railway Labor Act, as amended, by and between AMERICAN AIRLINES, INC. (hereinafter known as the "Company") and the AIR LINE PILOTS in the service of AMERICAN AIRLINES, INC., as represented by ALLIED PILOTS ASSOCIATION (hereinafter known as the "Association").

WHEREAS, the Company and the Association have entered into an Agreement setting forth rates of pay, rules and working conditions for pilots effective July 9, 1963, and

WHEREAS, said Agreement makes no provision for the assignment of copilots to serve as Second Officers on the Company's jet aircraft or for rates of pay, rules or working conditions for copilots so assigned,

IT IS MUTUALLY AGREED AND UNDERSTOOD:

1. The Memorandum of Understanding dated January 21, 1959 covering the assignment of copilots to serve as Second Officers on the Company's jet aircraft shall continue to be applicable to Convair 990 aircraft until September 30, 1963

and shall be applicable to Boeing 707 aircraft until October 31, 1963.

2. Effective November 1, 1963, the Memorandum of Understanding dated January 21, 1959 covering the assignment of copilots to serve as Second Officers on the Company's jet aircraft shall be of no further force or effect.

3. The provisions of Section 23-M-2 of the basic Agreement dated January 21, 1959, as amended, shall continue in effect to and including October 31, 1963, provided, however that additional base vacancies resulting from the application of this provision shall be awarded to reinstatement rights holders but shall not otherwise be bulletined or awarded.

4. The provisions of Section 24-E-1 of the basic Agreement dated January 21, 1959, as amended, shall continue in effect to and including October 31, 1963, but only as related to the assignment of Bid Copilots to reserve copilot flying in the number determined under Section 23-M-2.

5. The following hourly rates of pay for copilots serving as Second Officers shall be effective August 1, 1963, and shall continue in effect to and including October 31, 1963.

a. Day Flying

Year of Service	707-123B	990	707-720B
2	9.2624	9.1452	9.0280
3	10.6600	10.5261	10.3922
4	10.7307	10.5968	10.4628
5	11.0752	10.9379	10.8007
6	11.6914	11.5475	11.4035
7	12.0452	11.8979	11.7506
8	12.3984	12.2478	12.0971
9	12.7595	12.6055	12.4515

b. Night Flying

Year of Service	707-123B	990	707-720B
2	10.1374	10.0202	9.9030
3	11.6600	11.5261	11.3922
4	11.7307	11.5968	11.4628
5	12.1002	11.9629	11.8257
6	12.7664	12.6225	12.4785
7	13.1452	12.9979	12.8506
8	13.5234	13.3728	13.2221
9	13.9095	13.7555	13.6015

This Supplemental Agreement shall become effective on July 9, 1963, shall run concurrently with the Basic Agreement effective July 9, 1963, and shall be subject to the provisions of Section 33 thereof.

IN WITNESS WHEREOF, the parties hereto have signed this Supplemental Agreement, on the 9th day of July, 1963.

WITNESS: FOR AMERICAN AIRLINES, INC.

James J. Lamond, Jr. G. Marion Sadler
Vice President &
General Manager

E. J. Mahon W. B. Whitacre
Vice President-Personnel

H. B. Benninghoff A. Di Pasquale
Assistant Vice President
Labor Relations

WITNESS: FOR THE AIR LINE PILOTS IN THE SERVICE OF AMERICAN AIRLINES, INC. as Represented by ALLIED PILOTS ASSOCIATION

J. R. Lyons
Robert T. Guba
Paul G. Atkins
Joseph P. Garvey
Ralph L. Harkenrider

Nicholas J. O'Connell, Jr.
President

APPENDIX I

LETTER OF AGREEMENT

between

AMERICAN AIRLINES, INC.

and

THE AIR LINE PILOTS

in the service of

AMERICAN AIRLINES, INC.

as represented by

ALLIED PILOTS ASSOCIATION

IT IS MUTUALLY AGREED THAT:

1. Within ninety (90) days after the Company signs a Civil Reserve Air Fleet Standby Contract with the Government of the United States, the Company shall meet with the Association representatives for purposes of negotiating pilot pay, rules and working conditions covering operations under such Contract.

2. In the event of a National Emergency requiring the Company's participation in an Overseas and Foreign Operation, the Company shall meet with Association representatives, without delay, for purposes of negotiating pilot pay, rules and working conditions covering such operation. With the understanding that rates of pay and other benefits negotiated in such Agreement shall be retroactive to the first day of such Overseas and Foreign Operation, the American Airlines pilots will cooperate fully with the Company in implementing such operations without delay.

IN WITNESS WHEREOF, the parties hereto have signed this letter of Agreement; this the 9th day of July, 1963.

WITNESS: FOR AMERICAN AIRLINES, INC.

James J. Lamond, Jr.

G. Marion Sadler
Vice President &
General Manager

E. J. Mahon

W. B. Whitacre
Vice President-Personnel.

H. B. Benninghoff

A. Di Pasquale
Asst. Vice President-
Labor Relations

WITNESS: FOR THE AIR LINE PILOTS IN THE SERVICE OF AMERICAN AIRLINES, INC. as Represented by ALLIED PILOTS ASSOCIATION

Nicholas J. O'Connell, Jr.
President

J. R. Lyons
Robert T. Guba
Paul G. Atkins
Joseph P. Garvey
Ralph L. Harkenrider

PAY GUIDE — FIRST PILOT HOURLY BASIS* — DAY FLYING

Equipment	Years of Accredited Service								
	2 yrs.	3 yrs.	4 yrs.	5 yrs.	6 yrs.	7 yrs.	8 yrs.	9 yrs.	10 yrs. or over
B-707-323-C	$31.44	$31.64	$31.83	$32.03	$32.22	$32.42	$32.61	$32.81	$33.00
B-707-123-D	30.04	30.24	30.43	30.63	30.82	31.02	31.21	31.41	31.60
CV-990	29.68	29.88	30.07	30.27	30.46	30.66	30.85	31.05	31.24
B-707-720-B	29.32	29.52	29.71	29.91	30.10	30.30	30.49	30.69	30.88
B-727	27.34	27.54	27.73	27.93	28.12	28.32	28.51	28.71	28.90
L-188	21.46	21.66	21.85	22.05	22.24	22.44	22.63	22.83	23.02
DC-7-B	20.23	20.43	20.62	20.82	21.01	21.21	21.40	21.60	21.79
DC-7	20.15	20.35	20.54	20.74	20.93	21.13	21.32	21.52	21.71
DC-6-B	18.11	18.31	18.50	18.70	18.89	19.09	19.28	19.48	19.67
DC-6/CV-240	18.01	18.21	18.40	18.60	18.79	18.99	19.18	19.38	19.57

*For guidance only. The Agreement itself is the final authority.

PAY GUIDE — FIRST PILOT — HOURLY BASIS* — NIGHT FLYING

Equipment	2 yrs.	3 yrs.	4 yrs.	5 yrs.	6 yrs.	7 yrs.	8 yrs.	9 yrs.	10 yrs. or over
B-707-323-C	$33.94	$34.14	$34.33	$34.53	$34.72	$34.92	$35.11	$35.31	$35.50
B-707-123-B	32.54	32.74	32.93	33.13	33.32	33.52	33.71	33.91	34.10
CV-990	32.18	32.38	32.57	32.77	32.96	33.16	33.35	33.55	33.74
B-707-720-B	31.82	32.02	32.21	32.41	32.60	32.80	32.99	33.19	33.38
B-727	29.84	30.04	30.23	30.43	30.62	30.82	31.01	31.21	31.40
L-188	23.96	24.16	24.35	24.55	24.74	24.94	25.13	25.33	25.52
DC-7-B	22.73	22.93	23.12	23.32	23.51	23.71	23.90	24.10	24.29
DC-7	22.65	22.85	23.04	23.24	23.43	23.63	23.82	24.02	24.21
DC-6-B	20.61	20.81	21.00	21.20	21.39	21.59	21.78	21.98	22.17
DC-6/CV-240	20.51	20.71	20.90	21.10	21.29	21.49	21.68	21.88	22.07

*For guidance only. The Agreement itself is the final authority.

PAY GUIDE — COPILOT — HOURLY BASIS* — DAY FLYING

Equipment	Years of Accredited Service								
	2 yrs.	3 yrs.	4 yrs.	5 yrs.	6 yr.	7 yrs.	8 yrs.	9 yrs.	10 yrs. or over
B-707-323-C	$15.7200	$18.9840	$19.4163	$19.8586	$20.2986	$20.7488	$21.1965	$21.6546	$22.1100
B-707-123-B	15.0200	18.1440	18.5623	18.9906	19.4166	19.8528	20.2865	20.7306	21.1720
CV-990	14.8400	17.9280	18.3427	18.7674	19.1898	19.6224	20.0525	20.4930	20.9308
B-707-720-B	14.6600	17.7120	18.1231	18.5442	18.9630	19.3920	19.8185	20.2554	20.6896
B-727	13.6700	16.5240	16.9153	17.3166	17.7156	18.1248	18.5315	18.9486	19.3630
L-188	10.7300	12.9960	13.3285	13.6710	14.0112	14.3616	14.7095	15.0678	15.4234
DC-7-B	10.1150	12.2580	12.5782	12.9084	13.2363	13.5744	13.9100	14.2560	14.5993
DC-7	10.0750	12.2100	12.5294	12.8588	13.1859	13.5232	13.8580	14.2032	14.5457
DC-6-B	9.0550	10.9860	11.2850	11.5940	11.9007	12.2176	12.5320	12.8568	13.1789
DC-6/CV-240	9.0050	10.9260	11.2240	11.5320	11.8377	12.1536	12.4670	12.7908	13.1119

*For guidance only. The Agreement itself is the final authority.

PAY GUIDE — COPILOT — HOURLY BASIS* — NIGHT FLYING

Equipment	2 yrs.	3 yrs.	4 yrs.	5 yrs.	6 yr.	7 yrs.	8 yrs.	9 yrs.	10 yrs. or over
B-707-323-C	$16.9700	$20.4840	$20.9413	$21.4086	$21.8736	$22.3488	$22.8215	$23.3046	$23.7850
B-707-123-B	16.2700	19.6440	20.0873	20.5406	20.9916	21.4528	21.9115	22.3806	22.8470
CV-990	16.0900	19.4280	19.8677	20.3174	20.7648	21.2224	21.6775	22.1430	22.6058
B-707-720-B	15.9100	19.2120	19.6481	20.0942	20.5380	20.9920	21.4435	21.9054	22.3646
B-727	14.9200	18.0240	18.4403	18.8666	19.2906	19.7248	20.1565	20.5986	21.0380
L-188	11.9800	14.4960	14.8535	15.2210	15.5862	15.9616	16.3345	16.7178	17.0984
DC-7-B	11.3650	13.7580	14.1032	14.4584	14.8113	15.1744	15.5350	15.9060	16.2743
DC-7	11.3250	13.7100	14.0544	14.4088	14.7609	15.1232	15.4830	15.8532	16.2207
DC-6-B	10.3050	12.4860	12.8100	13.1440	13.4757	13.8176	14.1570	14.5068	14.8539
DC-6/CV-240	10.2550	12.4260	12.7490	13.0820	13.4127	13.7536	14.0920	14.4408	14.7869

*For guidance only The Agreement itself is the final authority.

NOTES

AA Form E301H
5000 7-63

Printed in U.S.A.

United States Court of Appeals

FOR THE SECOND CIRCUIT

JOSEPH V. MANNING, AS PRESIDENT OF THE AMERICAN AIRLINES CHAPTER, FLIGHT ENGINEERS' INTERNATIONAL ASS'N, *et al.*, *Plaintiffs-Appellees*,

v.

AMERICAN AIRLINES, INC., *Defendant-Appellant.*

S. D. N. Y. 63 Civ. 1187

Docket No. 28461

CHARLES H. RUBY, AS PRESIDENT, etc., *Plaintiffs*,

v.

AMERICAN AIRLINES, INC., *Defendant-Appellant*,

and

NICHOLAS J. O'CONNELL, *et al.*, *Additional Defendants-Appellants*,

and

JOSEPH V. MANNING, AS PRESIDENT, etc., *Intervenors-Appellees.*

S. D. N. Y. 63 Civ. 585

Docket No. 28473

APPENDIX TO BRIEF FOR AMERICAN AIRLINES, INC., DEFENDANT-APPELLANT.

PART TWO.

ARTHUR M. WISEHART,
Attorney for Appellant,
633 Third Avenue,
New York 17, New York.

TN 7-1234

GEORGE A. SPATER,
H. WAYNE WILE,
Of Counsel.

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Opinion of the District Court.

Motions for Preliminary Injunction.

(191) * WYATT, District Judge.

This action and the controversies involved form chapters in the troubled history of labor relations in the airline industry. Specifically, there are charges here of violations of the Railway Labor Act (45 U. S. C. A. §151 and following: the "Act") which was made applicable (192) to the air lines by amendments effective April 10, 1936 (45 U. S. C. A. §181).

The action is for an injunction, declaratory judgment and damages and was commenced by President Ruby of Air Line Pilots Association ("Alpa") and by Alpa against American Airlines, Inc. ("American" or "the Company"). Intervention under Fed. R. Civ. P. 24(b) was permitted to President Manning of American Airlines Chapter, Flight Engineers' International Association (the "Chapter"), and to the Chapter; it was represented that there were questions of law and fact in common. The intervenors filed a complaint also for an injunction, a declaratory judgment and damages.

Thereafter intervenors applied under Fed. R. Civ. P. 21 to add as additional defendants Nicholas J. O'Connell, Jr., Chairman of the Alpa Master Executive Council of American pilots (the "American MEC"), and also the members of the Negotiating Committee appointed by the American MEC (the "additional defendants"). After this application had been granted, the intervenors and also plaintiffs served amended complaints, which added averments respecting the additional defendants; the motions are considered on the basis of these amended complaints. (193) The motions now to be considered (a motion by plaintiffs for summary judgment and a motion by defendant to strike an affidavit, etc. will be dealt with separately) are five in number:

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* The references are to documents listed in the first supplemental index to the record on appeal, Section E.

1. by plaintiffs for a preliminary injunction restraining American

a. from negotiating with the additional defendants as a committee of pilots;

b. from refusing to negotiate with Alpa;

c. from influencing, etc. its pilots in their choice of bargaining representatives;

d. from "subverting" the rights of Alpa as bargaining representative of American pilots;

e. from making any agreement as to pilots except with Alpa; and

f. from changing working conditions in violation of the Act;

2. by American for a reference to a master under Fed. R. Civ. P. 53 to determine whether "a majority of defendants' flight deck employees desire the Joint Negotiating Committee to continue to act as their bargaining representative",

3. by intervenors for a preliminary injunction restraining American

a. from negotiating as to flight engineers except with the Chapter;

(194) b. from making any agreement as to flight engineers except with the Chapter; and

c. from refusing to bargain collectively with the Chapter;

4. by intervenors for an order restraining all parties, including the additional defendants,

a. from disseminating a proposed agreement concerning flight engineers;

b. from holding any meetings for considering and voting on such proposed agreement; and

c. from influencing etc. the flight engineers in their choice of bargaining representative; and

5. by plaintiffs for an order restraining the additional defendants

a. from negotiating with American as to pilots;

b. from acting with respect to agreements negotiated by them with American;

c. from influencing etc. the pilots in their choice of bargaining representative;

d. from "subverting" the rights of Alpa under the Act;

e. from making any agreement as to American pilots (195) except through Alpa; and

f. from participating in any change in working conditions in violation of the Act.

1. Relationship between Alpa and American; Internal Structure of Alpa

Alpa is a national labor oganization organized in 1931 and with Home Office in Chicago. For many years, going back at least to 1939, there have been written agreements between American and its pilots, represented by Alpa. These agreements have been signed by the President of Alpa "for the air line pilots in the service of" American. The last agreement is dated, and became effective, January 21, 1959. It provides that it shall be renewed each year without change unless notice of an intended change is given by one party to the other under Section 6 of the Act (45 U. S. C. A. §156).

Alpa has been recognized by American for many years as the representative of its pilots. There has not been until recently any "dispute" concerning representation which would bring about a certification by the National Mediation Board ("NMB"; 45 U. S. C. A. §152 Ninth); the January 21, 1959 agreement recites that Alpa has given "satisfactory proof" of its representation but this recital is a carry-over from earlier years; no proof was in fact (196) given or required and there is no evidence that Alpa was ever chosen as bargaining representative for the American pilots by any ballot or other formal procedure.

The representation by Alpa with which we are here concerned is of American pilots only, and not of pilots on other air lines. This has been the past pattern, the agreements have been executed on such basis, and it appears to be required or contemplated by the Act (e.g., 45 U. S. C. A. §§151 Fifth and 152 Fourth and Ninth); Alpa policy is firm for negotiations "individually with each carrier" and against "industry bargaining".

In this connection, the internal structure of Alpa should be noticed.

For each air line, the fundamental unit is the Local Council, one of which is established at each important base of the air line. The Alpa members in each Local Council elect a Captain Representative and a Co-pilot Representative.

The Captain Representatives and the Co-pilot Representatives from all the Local Councils of an air line make up the Master Executive Council ("MEC") of that air line.

The MEC elects a Chairman (called "Master Chairman") (197) and a Vice-chairman.

For each air line there is also a Negotiating Committee, which under Alpa policy is selected or elected by its MEC; the Master Chairman is ex-officio a member of the Negotiating Committee.

Such was the Alpa organization at American. During the relevant period the additional defendant O'Connell was Master Chairman; the Negotiating Committee was composed of Lyons (Chairman), Guba, Garvey, Atkins, Miller (until his resignation February 18, 1963) and Master Chairman O'Connell (ex-officio).

The highest governing body of Alpa is its Board of Directors, made up of the Captain and Co-pilot Representatives of all the Local Councils of all the air lines whose employees are represented by Alpa.

The Executive Committee of Alpa consists of the officers, these being the President, First Vice-President, five Regional Vice-Presidents, a Secretary and a Treasurer.

There is also an Executive Board of Alpa consisting of the Chairman and Vice-Chairman of the Master Executive Council of each air line.

(198) 2. The Crew Complement Issue Between Alpa and Feia (or its local Chapters).

To act as pilot of any plane, large or small, requires possession of the appropriate certificate under applicable government regulations. There are various types of certificates, some of which are: student, private, commercial pilot, and airline transport pilot. A commercial pilot's certificate (and "instrument rating") is required to act as a pilot on a commercial passenger plane; the pilot in command must hold appropriate airline transport pilot certificates and ratings. 14 CFR §40.300.

The addition of a flight engineer to plane crews came about with the development of larger passenger planes during and after World War II. In 1948 new government regulations required that the crew of large planes include the holder of a flight engineer's certificate.

Some carriers, including American, then employed flight engineers with a mechanical background and a flight engineer's certificate but without pilot qualifications.

These flight engineers have been historically represented for collective bargaining purposes by Flight Engineers' International Association ("Feia"); the Chapter is the local unit for American, has been certified since 1955 by the (199) National Mediation Board ("NMB") as authorized to represent American flight engineers (45 U. S. C. A. §152 Ninth), and has had contracts with American concerning working conditions until the last contract expired according to its terms on April 30, 1963.

Other carriers employed as flight engineers qualified pilots who also held flight engineer's certificates. On such carriers, Alpa represented all crew personnel and there was thus one union in the cockpit.

On carriers such as American there were, as indicated above, two unions in the cockpit.

Applicable regulations require a crew of three for larger planes, including jets, and one crew member must have a flight engineer's certificate. All three *may* be qualified pilots, provided one has a flight engineer's certificate, or it is sufficient that two only are qualified pilots and that the third holds a flight engineer's certificate without pilot qualifications.

Alpa has vigorously fought for what it calls a "fail safe" policy under which all three members of the jet crew must be qualified as pilots (meaning possession of at least a (200) "Commercial Pilot's Certificate and Instrument Rating", usually referred to in short as "C and I"), even though one acts as flight engineer. Feia and its chapters fight against a requirement of any pilot qualification for the flight engineer. This issue is usually called the "crew complement" issue. While supported on each side by safety arguments, the difference in attitude between Alpa and Feia must be to some extent influenced by the struggle over jobs and union membership.

In order to keep labor peace, American and certain other carriers have been flying large planes with a crew of four (three qualified pilots and a flight engineer).

American and the other carriers so situated naturally and properly desire (and feel compelled by the laws of economics) to reduce the cockpit crews to three members as permitted by the regulations and as presently believed on all sides to be entirely adequate for safety.

It is this crew reduction and the handling of the third seat for the flight engineer which is the root cause of the present litigation. In particular, the immediate cause of controversy is that Alpa, a national organization, insists on a *national* policy that all three members of the reduced crew must have at least a "C and I"; the Negotiating Committee (201) for American pilots (despite this national policy of Alpa) was willing to agree with American that the flight engineer member need not have a "C and I" (while conforming with all governmental safety regulations) provided the American pilots secured benefits from American in return, such as reduced hours, etc.

3. Reports of the Feinsinger Commission.

On February 17, 1961, the flight engineers walked out on American and the other major air carriers similarly situated. This forced a virtual stoppage of air transportation.

The walkout resulted from a controversy before the NMB between Alpa and Feia.

Alpa had requested certification by NMB as representative of *all* cockpit crew members (engineers included) of United Air Lines. Feia contended to NMB that flight engineers were a separate "craft or class" (45 U. S. C. A. §152 Ninth) and should vote separately from pilots for representative.

NMB appointed "a committee of three neutral persons" (45 U. S. C. A. §152 Ninth), the Chairman being J. Glenn Donaldson, to decide this dispute.

(202) The Donaldson Committee on January 17, 1961 made a decision that all crew members in the cockpit—whether pilots or flight engineers—are "one craft or class"

and should vote together "on one ballot" for a bargaining representative.

This was, of course, a victory for Alpa and the walkout of flight engineers took place as a protest one month later.

On February 21, 1961 the President appointed a Commission, with Professor Nathan Feinsinger as Chairman, to investigate and report; the engineers returned to work.

The Feinsinger Commission made a preliminary report on May 24, 1961. The principal recommendations were:

a. that there be one union in the cockpit and that Alpa and Feia should merge;

b. that jet planes operate with a three man crew;

(203) c. that flight engineers on jet planes (subject to job protection in a transition period) be qualified as pilots (that is, have a "C and I"); and

d. that job equities of the then pilots and engineers be reasonably protected.

The President declared that the parties should "negotiate a final settlement of their differences on the basis of these recommendations."

The Feinsinger Commission submitted a supplemental and final report on October 17, 1961 which expanded some of its recommendations, principally (a) as to the detailed pilot qualifications to be expected of flight engineers on jet planes (which included possession of a "Commercial Pilot's Certificate and Instrument Rating") and (b) as to methods of protecting job equities.

The recommendations of the Feinsinger Commission did not lead to any quick agreement between the pilots, engineers and any air lines. There were further negotiations as to each air line.

For example, Pan American and Alpa, after much negotiation, accepted a request made by the President and on (204) April 17, 1962 agreed to arbitrate their differ-

ences. The Pan American engineers declined to arbitrate. This particular dispute engaged the attention in July 1962 of the Court of Appeals for this Circuit. *Pan American World Air* v. *Flight Eng. Intern. Assoc.*, 306 F. 2d 340 (2d Cir. 1962).

It proved impossible to settle in any way the disputes as between Eastern Airlines, its pilots and engineers. A crippling strike was started against Eastern by its flight engineers on June 23, 1962. Some aspects of this were before Judge Feinberg last year in *Flight Engineers Int. Ass'n EAL Chap.* v. *Eastern Airlines*, 208 F. Supp. 182 (S. D. N. Y. 1962), affirmed 311 F. 2d 745 (2d Cir. 1963).

The situation as to American will be examined in greater detail.

4. PILOT NEGOTIATIONS AND MEDIATION BEFORE THE TWA SETTLEMENT.

Negotiations began between American and its pilots (through Alpa) by the service of "openers" in March 1961 by American and by Alpa (acting through President Sayen) under Section 6 of the Act (45 U. S. C. A. §156). The American "opener" was addressed to the President of Alpa in Chicago.

(205) Meetings were held from time to time in 1961 between American (whose principal representatives have been Vice-presidents Whitacre and Lamond) and the Negotiating Committee. According to practice, the Alpa Home Office in Chicago participated in such meetings through a paid employee (called a "staff negotiator") who reported back to the Home Office. Harkenrider was Alpa staff negotiator with the American Negotiating Committee until withdrawn on November 28, 1962 as later described. It was not usual for any Alpa officer to take part in the negotiations, except in such a case as Miller who was an American pilot and member of the Negotiating Committee and was also a Regional Vice-president of Alpa.

Agreements were not reached in 1961 (possibly waiting on or observing the Feinsinger Commission) and on September 21, 1961 Alpa asked NMB for its mediation services.

On October 21, 1961, American notified Alpa that it accepted the recommendations of the Feinsinger Commission and added them to its Section 6 openers, specifically mentioning the crew complement recommendations.

The situation in American was importantly and significantly affected by the desire (known to the Alpa Home Office) on the part of American pilots for a reduction (206) in hours, an improved retirement plan, and other changes. Alpa President Sayen on November 7, 1961 wrote the NMB that the crew complement problems were "but minor issues on American Airlines" compared to the pilot proposals on retirement and working conditions. While American was willing to accept the Feinsinger Commission recommendations, it evidently did not feel that it could afford to train its flight engineers at its expense to comply with these recommendations and also at the same time grant to its pilots reduction in hours, better retirement treatment, etc.

A mediator from NMB (Michael or "mediator O'Connell", to distinguish him from the additional defendant O'Connell) had been designated in due course and was attending the pilot negotiations but by June 29, 1962 the pilot situation on American was at a stalemate. The pilots insisted on a reduction in hours, etc.; American insisted that it was impossible to grant these benefits in the face of the expected expense of training flight engineers to secure pilot qualification, the major expense being the qualification of flight engineers with a "commercial pilot's certificate and instrument rating". The mediator felt that an impasse had been reached.

On July 2, 1962, NMB notified the parties that (207) mediation had been unsuccessful and urged an agreement to arbitrate (45 U. S. C. A. §155 First).

American accepted the proffer of arbitration but on July 11, 1962 Alpa declined it.

NMB therefore on July 18, 1962 notified the parties that its services had terminated; this meant that after the thirty day period under the Act, the parties were free from the Act's restrictions (45 U. S. C. A. §155 First).

5. Flight Engineer Negotiations and Mediation Before the TWA Settlement.

The last agreement executed between the Chapter and American was effective May 1, 1958 and was to continue until April 30, 1963 except that "openers" under Section 6 of the Act were permitted to be served as to compensation provisions (Sections 5 and 6 of the May 1, 1958 agreement) to be effective not earlier than May 1, 1961. American by the agreement recognized the Chapter as "duly designated bargaining representative" of its flight engineers as certified by NMB (the certification had been made on May 25, 1955). Unlike Alpa which has Local Councils at each important base, the Chapter includes all flight engineers at all American bases.

(208) In February 1961, Section 6 "openers" as to compensation were served both by the Chapter on American and by American on the Chapter.

The Chapter had a Negotiating Committee on which were President Manning, Apkarian, Petree, and Simpson; unlike Alpa (where the Negotiating Committee was elected by the pilot's MEC), the flight engineers' membership at large elected the Negotiating Committee, the last such election having been held in March or April 1961.

There were negotiating sessions between the flight engineers and American in August and October 1961 but no agreement was reached, again probably because of the developments associated with the Feinsinger Commission.

There were other negotiating sessions in January and March 1962; the engineers believed, however, that American would not negotiate to a conclusion on their wages until the crew complement issue had been settled. Accordingly on March 14, 1962 the Chapter asked NMB for mediation.

Thereafter the NMB assigned Holaren as mediator and meetings took place; that these were unsuccessful was

doubtless because of the unresolved crew complement issue and the then pending proceedings in this connection before (209) Presidential Emergency Boards involving other air lines.

NMB recognized mediation as unsuccessful and urged an agreement to arbitrate (45 U. S. C. A. §155 First). On June 19, 1962 the Chapter refused arbitration and NMB then on June 21, 1962 terminated its services, leaving the parties—after the statutory 30 day period—free from the Act's restrictions (45 U. S. C. A. §155 First).

6. TWA Settlement and Resumption of Negotiations on American.

On June 21, 1962, then Secretary of Labor Goldberg was able to announce that TWA and its flight engineers had settled the crew complement issue, subject to ratification by the engineer membership. The settlement was made on the basis of the Feinsinger Commission recommendations, including an eventual merger of the TWA Chapter of Feia into Alpa and possession of a "C and I" by the flight engineer member of three man crews. Unresolved economic issues were to be arbitrated.

This TWA settlement came about after a serious situation had been created by a strike notice from its flight engineers to TWA and after an Emergency Board had been appointed by the President (on March 20, 1962) under Section 10 of the Act (45 U. S. C. A. §160).

(210) 7. Washington, July 1962—Pilots and Flight Engineers Meet Separately with American.

After the settlement between TWA and its flight engineers had been announced on June 21, 1962, the Labor Department officials wished to encourage a similar and prompt settlement on American. Among other reasons, this was expected to help toward ratification by the TWA flight engineers of the TWA settlement and to help toward

settlement on Pan-American and Eastern (whose flight engineers had rejected the TWA settlement and announced a strike for June 23, 1962, which began on Eastern but not on Pan-American); at the same time, a long range labor solution on American itself (a most important domestic carrier) would obviously be in the public interest.

After being so requested by the Labor Department, the Chapter (through its MEC acting unanimously) on July 6, 1962 approved the terms of the TWA settlement as a formula for settling the crew complement issue on American. The Secretary of Labor promptly announced this in a press release.

The Labor Department officials then requested the flight engineers and American to meet with them in Washington; they did so in the week of July 9, 1962.

These officials brought the Company and the flight (211) engineer's committee together for a series of meetings that week in Washington, proposing the TWA formula as the basis for crew complement settlement. The engineers were primarily interested in discussing wages at once, but little progress on this could be made; they were told by the Company to forget about crew complement until it could be negotiated with the pilots.

The Company representatives explained privately to the Labor Department officials that the problem on American was not so much with the engineers as with the pilots, this because the American pilots were far more interested in reduction of hours and other benefits (which would be very expensive for the Company) than in crew complement. In this connection, it was also explained that the American pilots as far back as 1958 had wanted a reduction in hours, etc. rather than the agreement for a four man crew, and that the agreement for a four man crew had been made by American with then President Sayen of Alpa. In fact, the American pilots had suggested to the Company as recently as May of 1962 that they were not interested in having the Company spend its money to qualify flight engineers

with a "C and I" under the Feinsinger Commission formula; they wanted a reduction of hours and other benefits instead.

(212) The Secretary of Labor, after considering this explanation by the Company, arranged to bring the pilots to Washington; in the week beginning July 16, 1962, representatives of the pilots, of the engineers, and of the Company were in Washington. Meanwhile, President Ruby of Alpa, had also come to Washington by request; he (a long time pilot for National Airlines) had just been elected in June as President of Alpa.

The engineers played little part in the Washington meetings which began July 16; they did not see the Company team at any time; they had one meeting with the pilots; and on July 20 they were excused by the Secretary while the Company and its pilots negotiated.

At the request of the Labor Department officials and with the participation of Chairman Edwards of NMB, the pilots and the Company worked steadily in Washington from July 16, 1962 until July 25, 1962.

The effort, under suggestions from Chairman Edwards, was first to try to agree on as many items as possible and leave to one side those items on which it appeared difficult to agree. Thus many provisions were in fact agreed upon, but these are of no significance here.

(213) Ruby of Alpa was present at many of these meetings and Harkenrider of Alpa was present at all of them (and at all other pilot meetings with the Company until his removal by Alpa on November 28, 1962); the agreed items were in fact initialed by Harkenrider for the American pilots.

The differences between the Alpa national organization and the Alpa local American organization—those differences which finally led to the present litigation—became more evident in Washington in July 1962 to those organizations, as well as to the Company itself.

For example, Ruby met informally with the Company and two of the chief pilot negotiators at the Hay-Adams Hotel on July 22. O'Connell, one of the chief pilot negotiators and now an additional defendant, there made it clear that his group was primarily interested in reduction of hours and other benefits and if it were necessary to save the Company money on flight engineer training in order to secure such benefits, his group would consider agreeing to a reduction in flight engineer training below that required for a "C and I" as recommended by the Feinsinger Commission. While thus put on notice, Ruby did not agree and stated a contrary Alpa position. O'Connell had earlier the same day in an open meeting, with Chairman (214) Edwards present, stated that the crew complement problem on American was "inversely related to reduction in hours".

The Washington meetings were adjourned on July 25 and, at the suggestion of Chairman Edwards, were to be resumed on July 31, in Fort Worth.

8. July 31—November 1 Negotiations Between Pilots and American.

The meetings in Fort Worth (July 31-August 2) between the pilots and the Company, with Chairman Edwards present, were significant because the basis was there established for all subsequent negotiations.

The pilots, through O'Connell, made a proposal during those meetings which (apart from details not here significant) was that if the Company would grant them reduced hours and an improved retirement plan, they on their side would agree to a three man crew without insisting that the flight engineer have a "C and I" (thus saving the Company expensive training), and would bring the engineers not only into such an agreement but also into a merger with Alpa so that the Feinsinger Commission recommendation of one union in the cockpit would be accomplished.

This proposal came from the pilots, not the Company, and was often called "O'Connell's iffy"; in fact the pro-

posal (215) came from Alpa itself because the Negotiating Committee was at the time (and for a considerable period thereafter) functioning as an official Alpa bargaining committee with an Alpa Home Office staff member in constant attendance. Since the proposal conflicted, however, with the strong position theretofore taken by the Alpa national organization, the Company raised the question in Fort Worth and later whether the pilots could secure an Alpa approving signature. The pilots were apparently confident that the Alpa Home Office would go along and told the Company team that Alpa policy had been changed at its last convention and that they (especially Garvey) had a good deal to do with Alpa policy in this area. Moreover, Miller, a Regional Vice-President of Alpa, was a member of the pilots' Negotiating Committee and was at the Fort Worth and many other meetings; Harkenrider, the Alpa staff negotiator, was also there and at all other meetings until late November. The American pilots did not at this time contemplate any break away from Alpa.

The Company team was interested, felt that the one union condition was (among other things) highly important, and asked for a recess so that the cost of the proposal could be calculated.

(216) There was then a series of meetings between the Company team and the pilot's team at Washington, Los Angeles and New York.

These meetings, and all other negotiating meetings relevant here (except those about pilot-flight engineer merger into one union), were attended by Chairman Edwards of NMB or mediator O'Connell or mediator Schoonover; sometimes Chairman Edwards and one of the other mediators would both attend. All the negotiating meetings indicated were either arranged by, or the time and place had the approval of, the NMB personnel.

There were still many vexing issues between the Company and its pilots, even though their main objectives may have become common. For example, how much of a reduc-

tion in maximum work hours per month should be made? The pilots wanted a low figure, the Company a higher figure than the pilots.

Finally, in middle or late September, the Company and pilots felt sufficiently agreed in principle that they suspended their meetings to permit O'Connell and his pilot committee to deal with the flight engineers and bring about their agreement to the contemplated arrangement with the Company and to a merger agreement with Alpa.

(217) 9. PILOTS-FLIGHT ENGINEERS TALK MERGER; JULY-NOVEMBER 1962.

In mid-September 1962 when the settlement plan proposed by O'Connell in Fort Worth had thus been made the basis of an agreement with the Company in principle, the pilots turned to talks with the engineers in order to secure their acceptance of the plan, including merger with Alpa.

An opening had already been made for these talks. O'Connell had explained his plan to Chapter President Manning in July even before presenting it to the Company. The day after the Fort Worth meetings adjourned, O'Connell and Harkenrider met in New York (on August 3) with Manning and with Chapter counsel; they also met in Los Angeles with Manning alone before the talks there on August 29 and 30 between the pilots and the Company.

The engineers were certainly prepared to accept as satisfactory everything to be done by American under the O'Connell plan. While they had accepted the recommendations of the Feinsinger Commission, the requirement of a "C and I" for the flight engineer was no article of faith with them; quite the contrary. Accordingly, if the pilots were willing to agree with the Company to eliminate this particular recommendation, the flight engineers would have no objection.

(218) Acceptance by the American Chapter of the Feinsinger Commission recommendations had meant acceptance

of the principle of one union for all cockpit employees. To put this principle into practice, however, was a matter of some difficulty.

From about mid or late September 1962 to the end of October 1962, the pilot's committee and the flight engineer's committee met in New York (no mediator or any other third persons being present) and discussed the terms on which the Chapter would be merged into Alpa. The flight engineers did not negotiate with the Company during this period, but talked with the Company team on September 21 and in mid-October to confirm the Company's attitude as reported by the pilots and to exchange general views.

The merger negotiations were based on merger of the Chapter into Alpa and its constitution, by-laws and policy manual—at the insistence of the pilots—were to be controlling. The flight engineers were told by the pilots, as the Company had been told, that Alpa would go along with an agreement even though a "C and I" for all crew members was not required.

By the end of October, an agreement of merger had (219) been almost completed, but some important points had not been resolved.

One of these was the pay relationships between flight engineers and pilots. The engineers were giving up to Alpa their separate representation as against the Company, so that after the merger wages for engineers would be negotiated by Alpa. There are about 600 flight engineers employed by American as against about 1600 pilots. It was therefore desired to put into the agreement some percentage figure as the minimum relationship between the two pay scales, so that there could be some standard for future negotiations. It proved impossible to agree readily on this percentage figure, but it was agreed between pilots and engineers that the Chapter negotiating committee would separately negotiate with American on engineer wages for the contract then to be made, and that the engineer wage thus negotiated would form the basis for the pay relationship with pilots to be inserted in the merger agreement.

By the end of October and after much time had been spent by the pilots and the engineers trying to agree on all points, the Company appeared impatient to start formulating a crew complement agreement. At the suggestion, or at least (220) with the approval, of Chairman Edwards, the pilots and engineers agreed to put their merger talks to one side for the time being and to sit down with the Company on the crew complement issue.

10. First Joint Pilot-Flight Engineer Negotiations with American; Crew Complement Agreement of December 1, 1962.

The first meeting of the Company jointly with the pilots and the flight engineers was on November 1.

Reports as to the merger negotiations of the two unions were made to the Company by O'Connell for the pilots and by Manning for the engineers. It was plain from these reports that merger was still a thing of the future.

Manning explained the understanding of the engineers: that, although a crew complement agreement was now to be discussed, it was to be effective only as part of an overall agreement which would include merger agreement between the two unions, a basic working agreement for pilots and engineers (including pay provisions for engineers), etc. Either Manning or Schwartz (Chapter counsel) or both referred to the fact that both pilots and engineers would be "pilots" under the contemplated arrangements, all would be one, and O'Connell would speak for all in the negotiations.

(221) The crew complement discussions lasted off and on all during November. The engineers spoke frequently for themselves, their counsel likewise. The pilots and the engineers made separate written proposals to the Company.

These discussions finally resulted in an agreed document setting forth the provisions to govern the crew complement reduction from four men to three men. This document was initialed on December 1, 1962 by O'Connell for the pilots, by Manning for the engineers, and by Whitacre for

the Company. The initialed document was then given to mediator O'Connell, who later gave it to Chairman Edwards.

Harkenrider, the Alpa staff negotiator, had been withdrawn (for reasons shortly to appear) by Alpa on November 28, 1962, just before the initialing.

The December 1 crew complement document was drawn as a "memorandum of agreement" between, and to be executed by, the Company, Alpa and the Chapter. Some of its important provisions were:

a. the Company can convert to a 3 man crew on jet planes;

b. the present American flight engineers are "pilots" under the agreement; when serving as flight (222) engineers in a 3 man crew they are called flight officers; and they may qualify by having "any type of pilot certificate" (that is, less than a "C and I"; for example, a student's certificate) and by taking certain prescribed training;

c. the present American flight engineers are to be consolidated with the pilots "into one unit . . . for the purpose of collective bargaining representation" and it is represented that a majority have chosen Alpa "as their exclusive collective bargaining representative"; and

d. the Chapter "irrevocably relinquishes any right it may have to represent employees of the Company" and "acknowledges" that the Company may treat Alpa as the "exclusive collective bargaining representative" of the present American flight engineers.

The December 1 crew complement document settled many of the important and vexing problems as between American, its pilots and its engineers but—whatever the significance of the initialing may have been—it was, as Whitacre testified, "subject to a complete agreement". That "complete agreement" has never been reached.

(223) Nothing which was said or done in these joint negotiations justified the company in believing that the engineers had given up their representation rights to a "joint committee" or otherwise. It was clear that the giving up would only occur *after* a complete and overall agreement had been reached by all parties, which unfortunately never came to pass.

11. Rift Within Alpa; Recess of the Negotiations in December.

From at least August 2 (Fort Worth), the Alpa national organization and the Alpa local American organization were each set on a collision course. Only a change of direction by one or the other could have avoided the collision, the legal effects of which are now to be determined.

The Alpa national organization was insisting that each member of a 3 man crew must have a "C and I". Any chance of a relaxation of such policy or of a compromise by Alpa disappeared with developments on the other large air lines.

On September 25, 1962, an agreement was executed by Ruby (for Alpa) acting for all TWA pilots, and by TWA, providing (among many other things) for a "C and I" for all members of a 3 man crew on TWA. The TWA engineers ratified (224) the settlement and executed their agreement on November 21, 1962.

On September 27, 1962, Ruby had executed a similar agreement (for Alpa) acting for all Pan-American pilots.

After the strike of flight engineers on Eastern (which began June 23, 1962) had dragged on for several months, Eastern made some arrangement with Alpa under which pilots (with the necessary flight engineer's certificate) took over the seat of the flight engineer; thus on Eastern all members of a 3 man crew have at least a "C and I".

According to Ruby, by January 1963 all of the air lines except American and Trans Caribbean were operating

under a "C and I" requirement for all members of a 3 man crew.

Against this background, it seems clear that Alpa as a national organization would find it difficult to make a policy exception so that American would be the only major air line without the expensive "C and I" requirement for flight engineers.

The elected representatives of the American pilots (its Alpa MEC) and the appointed Alpa Negotiating Committee were ready and willing, however, to make a trade with American (225) under which they would receive a reduction in hours and an improved retirement plan against waiver of any "C and I" requirement for the flight engineer. There is nothing surprising or unreasonable about such an attitude.

The Company thus found itself between these two opposing positions, but would naturally attempt to find an accord with its own employees. It therefore accepted in principle the proposal made by its pilots, as an Alpa Negotiating Committee, in Fort Worth about August 1.

Ruby did not learn of the Fort Worth proposal until about the middle of September. He then promptly sat down with the American committee and made it clear that he would insist that a "C and I" for the flight engineers be part of any settlement. The pilots insisted that they preferred, and would demand, a reduction in hours. Ruby apparently felt that both were possible; in this, he was mistaken.

In October, Ruby had apprehensions as to the course of negotiations and asked O'Connell to attend an Alpa Executive Committee meeting in Chicago on October 23. O'Connell did so. He apparently gave the position of his group with frankness, because Ruby says the Executive Committee then "found out definitely" that the American pilots (226) were not insisting on a "C and I" for the flight engineer. The Alpa Executive Committee adopted a resolution informing the American pilots that Alpa policy

"requires a Commercial and Instrument Rating" for the third crew member and that "this concept must be met". Hiller was the only pilot from American on the Executive Committee and if present at the meeting he abstained on the vote.

Ruby met with O'Connell and the American Negotiating Committee on November 1 and 2 and again asserted their obligation to follow Alpa "mandatory policy" as to flight engineer qualifications. Ruby outlined his idea of how they should negotiate, they agreed to try it out, but Ruby could see that they were reaching an "adamant position".

As November wore on and the American pilots remained "adamant", Ruby again referred the matter to the Alpa Executive Committee which on November 27 advised that Harkenrider be removed as staff negotiator with the American pilots because of his failure to reflect the October instructions from the Executive Committee (Harkenrider attended no American negotiating sessions after November 28). The Alpa Executive Committee also declared that "continuation of negotiating sessions inconsistent with Alpa policy is already (227) destructive and intolerable". On the same day (November 27) Ruby sent a telegram to Chairman Edwards asking that the American negotiations "be suspended", but no such suspension in fact took place; on the contrary, the negotiations continued until the initialing of the December 1 crew complement document was accomplished, and for a few days thereafter.

On the same date—November 27—the Alpa Executive Committee asked the American Negotiating Committee and Harkenrider to appear before them the following day. Harkenrider did appear and gave a complete report; O'Connell and the rest of the American Committee did not appear. The Alpa Executive Committee adopted resolutions that the American negotiations "be recessed . . . until . . . there is complete understanding as to the direction of such negotiations and a resolution of the controversy on crew complement" and that "such understanding be in writing".

Miller, the only American pilot on the Executive Committee of Alpa, was apparently not present; those voting were all of air lines other than American.

After sending copies of the resolutions to O'Connell, Ruby again met with him and the Negotiating Committee on December 5 and 6. Ruby was unable to get any satisfactory (228) "understanding . . . in writing" from the Negotiating Committee.

Ruby also went with O'Connell on December 6 and had a discussion with Whitacre. It is not clear to what extent Ruby was told of the December 1 initialed document; certainly he was not given a copy of it. The point seems without much significance because in any event Ruby had full knowledge of the negotiating attitude of the American Committee, namely, that they would not insist on a "C and I" for flight engineers.

At the December 6 discussion with Whitacre, he and Ruby did agree (over the objections of O'Connell) that the negotiations would stand in recess—with the approval of Chairman Edwards—until some time in January.

12. Final Split Within Alpa; the Company Decides to Continue Negotiations with the Committee of its own Pilots

The American MEC met in Chicago on December 11, 12 and 13. Ruby was with them on several occasions; the old ground was covered; there was no change. It was agreed, however, that the American MEC would meet in joint session with the Alpa Executive Committee.

Ruby then on December 19 called in the Master (229) Chairman of the thirteen air lines flying jet planes, including O'Connell of American; Ruby asked if he had been correctly stating Alpa policy and he gave O'Connell an opportunity to explain the American Committee's views. Eleven of the Master Chairman declared that Alpa policy required as a minimum a "C and I" for all flight engineers; O'Connell and another dissented.

On January 3, 1963, the Negotiating Committee met with Whitacre on an unrelated matter (the "wet lease"); at that time O'Connell told Whitacre that the American MEC had directed that negotiations be resumed on the same basis as before the recess. Whitacre said the Company was not in a position to resume negotiations until more had been heard of the American Committee's status and until Whitacre could talk it over with Chairman Edwards.

The American MEC met in Chicago again from January 8 through 11, 1963, with some 22 members present. The MEC met separately, met with President Ruby, and met jointly with the Alpa Executive Committee. Ruby stated perfectly clearly the "mandatory policy" of Alpa to require a "C and I" for flight engineers and he reminded the American pilots that there had never been an agreement on (230) any air line "which contemplated less than a commercial license and instrument rating for the third crew member on jet equipment".

The American pilots were equally clear and were "adamant". The American MEC at Chicago resolved unanimously and "speaking for the entire AAL pilot group" to authorize the Negotiating Committee to conclude an agreement with American without requiring flight engineers to have a "C and I". The American MEC further authorized the Committee to advise the Company that the pilots were "agreeable to implementation of said contract with or without formal approval of the Alpa". The American MEC declared that the pilot group had "no intention of giving up demands regarding reductions in flight time and duty formulas that have been successfully negotiated".

At this point, the split between the American MEC and the Alpa national organization became complete and it later proved to be final.

On January 11, Ruby notified the American Negotiating Committee that no negotiations could take place without "prior approval" of Ruby himself. He also gave notice that such "prior approval" was required before Alpa

would (231) reimburse the Negotiating Committee members—as had been the practice in the past—for their expenses and for loss by them of flight pay while acting as negotiators.

Under date of January 11, Ruby also notified the President of American that any negotiations with its pilots had to be "with the presence and consent" of Alpa and that further negotiations could only take place by "arrangement" with Ruby.

On January 11 at New York, O'Connell again asked Whitacre to resume negotiations with his committee. This time he told about the American MEC resolutions at Chicago and also said that any agreement reached would be submitted for ratification by 75% of American's pilots; he asserted confidently that this could be secured easily.

Whitacre then on January 15 exp ined the situation to Chairman Edwards, who advised in substance that the Company had no choice but to resume negotiations with the American Committee, that it was the same committee as before and that there was no other committee with which to negotiate. Testimony by Whitacre to this conversation was received over objection by plaintiffs and intervenors that it was not binding and was hearsay and further that Chairman Edwards could not, (232) or would not, be called by them to testify because of a suggested privilege arising from NMB regulations. These objections are not believed to be well taken, but even had the testimony been excluded the conclusion would be the same. The record shows without contradiction that when, as will be seen, the Company did resume negotiations with the American pilot committee, Chairman Edwards or another NMB mediator (Schoonover at this period) was always present, or both together were present. This in itself shows an approval by the mediators of the course which the Company decided to follow; such an approval has no force as a matter of law but is significant in determining the Company's good faith.

On January 16, O'Connell, as Chairman of the American MEC, sent a letter to the President of American containing the text of the American MEC Chicago resolutions and repeating in substance what had earlier been told to Whitacre about resuming negotiations.

On January 16, 1963, negotiations were in fact resumed between the Company and the pilot's negotiating Committee; the composition of the committee was the same, except that Miller was away on a trip to Africa; neither Harkenrider (who had not been a member of the committee) nor (233) any other Alpa employee was present.

On January 17, 1963, the engineers negotiating committee joined the negotiating group.

It was therefore the Company's decision, on or about January 16, 1963, to negotiate with the American pilot's committee despite the opposition and warnings of Alpa. The Company refused to bargain with the Alpa national organization; it decided to bargain with the negotiating committee of its pilots, which committee had been chosen under Alpa auspices and procedures.

13. American had Reasonable Grounds to Believe that the Negotiating Committee Represented a Majority of the "Craft or Class" of its Pilot Employees and Acted in Good Faith in Continuing to Deal with that Committee so far as Pilots are Concerned.

Whether the Company acted in good faith in continuing to bargain with the Negotiating Committee appears to be an issue of fact. Consideration of all the evidence, including that contained in the foregoing recital, leads to a conclusion that in an unhappy situation the Company did act in good faith and without any improper influence, coercion or assistance with respect to any of its pilot employees.

(234) The question before the Company under the Act was: who was the "representative" of the "craft or class" of American pilots, the American Negotiating Committee or the Alpa Home Office?

The credentials of the American Negotiating Committee were far more impressive in this respect than those of the Alpa Home Office.

The Negotiating Committee had been selected by the American MEC and in effect the Company was dealing with the American MEC itself, since the Committee reported to and received instructions from the MEC and the Master Chairman was a member ex-officio of the Committee. The American MEC was made up of the *only* representatives *elected* by American pilots; during the dispute with the Home Office, elections of such representatives by American pilots continued to take place at six months intervals, one-third being elected each six months, the most recently elected representatives taking office on October 1, 1962, and April 1, 1963. The MEC, according to Alpa policy, is "the highest governing body" for the pilots on an air line; likewise, elected representatives must represent "their constituents" according to Alpa policy and failure to do so is said to be against the interests of (235) Alpa itself. The American MEC supported, approved and ratified all that its Negotiating Committee did.

The Alpa Home Office and its several members who had discussions with the Company—Ruby, McMurray and Christie—were not employees of American and had not been elected by American pilots. In fact, the decisions made by the Alpa national organization were made by pilots from air lines *other* than American. This is to be considered in the context that under the Act representatives of employees in the air line industry have been selected on an individual carrier basis and negotiations conducted on an individual carrier basis; this is, moreover, a part of Alpa policy which specifies that negotiations must be carried on "individually with each carrier".

The Committee with which the Company elected in January 1963 to continue to deal was exactly the same committee with which it had been dealing all along—a committee which, so far as American could tell, had the con-

fidence and approval of the Alpa Home Office until January 1963.

It was not the Company which caused the split between the Committee and the Alpa Home Office. The proposal (236) to require of flight engineers less than a "C and I" —over which the split occurred—was not made by the Company but by the Negotiating Committee of the pilots, and at a time when this Committee was officially representing Alpa and with an Alpa staff negotiator in attendance.

Nor did Alpa ever present the Company with any feasible alternative to continuing to deal with the old Committee. No new or substitute committee was ever presented to the Company by Alpa, and both uniform past practice as well as Alpa policy required that negotiations be conducted for the American employees by a committee from such employees. The outside national officers and staff members of Alpa were never authorized to carry on negotiations for American pilots, and they never undertook in this instance to do so.

Under the circumstances, it seems impossible for Alpa to have produced a proper Negotiating Committee, other than that already in existence. The Alpa Policy Manual makes it clear that

> "The MEC shall appoint or elect the members of the Contract Negotiating Committee."

The American MEC had in fact appointed the Committee with which the Company dealt and, supporting that Committee fully, (237) was not likely to appoint another, either at the request of the Alpa Home Office or otherwise.

All past contracts had been negotiated by the Company with just such a Committee and no President of Alpa had ever refused to sign a contract so negotiated. Indeed, a minor agreement—respecting the "wet lease" by American to British West Indian Airways—was negotiated with this very Committee as late as January 1963 and signed for Alpa by President Ruby.

The Company never suggested that its pilots leave Alpa, and certainly never made it any condition of its promises that a separation take place. The Company was ready at all times to sign an agreement with Alpa, but the Alpa Home Office would not sign the agreement as negotiated with the Committee representing American pilots. There may have been good reasons for the attitude of the Alpa Home Office, but with these or the merits of the dispute otherwise this Court can have no concern. To give the Alpa national organization, controlled by employees of other air lines, a veto power over contracts negotiated by the American pilots who must work under the contracts is not consistent with democratic procedure on the American air line system itself.

(238) This is especially true when it is considered that Alpa, as a bargaining representative, is an agent only; it is the American pilots themselves who are the principals. The execution of past agreements bears witness to this; they are signed by the President of Alpa "for the air line pilots in the service of American Airlines, Inc." The elected American MEC is much closer to the pilot principals than the Alpa Home Office and national organization.

Moreover, it was represented to the Company by the Committee that discussions at the Local Council level had shown a unanimous support for the Committee which could "very easily guarantee" at least a 75% approval by the pilots of any contract negotiated. There seems to have been no reason whatever for the Company to doubt this.

The Company, without any certification or election or other form of choosing by its pilots, had for a long period recognized Alpa as bargaining representative. There seems nothing to prevent the Company in good faith from withdrawing such recognition on the basis of new and convincing evidence.

Finally, the actions of Chairman Edwards and his NMB associates must be taken into account. These could not (239) make legal what was illegal, but on the issue of good

faith in a difficult situation they are not without significance and add to the impression that the Company acted properly in its dealings with the pilots.

14. Further Steps by Alpa; Commencement of This Action.

It may be convenient at this point to refer to the next steps of Alpa before the institution of this action.

Under date of January 18, Ruby sent telegrams to Chairman Edwards and to the Company declaring that the American pilot's committee had no authority to speak for, or to conclude any agreement for, American pilots and that the resumed negotiations were in violation of the Act. On the same day Ruby wrote to the Company (copy to Chairman Edwards) drawing attention to a provision in Alpa's constitution and by-laws requiring approval of the Executive Committee of Alpa or of its president before negotiations can be initiated or agreements executed.

The Company's reply to Ruby (dated January 18) included a statement that Chairman Edwards was present at the resumed negotiations and "advises that the parties should continue to bargain".

(240) Under date of January 24 Ruby then sent three letters: (a) to the Company, again warning that dealing with the pilot's committee was unauthorized and illegal, and asking for a meeting on January 30 "to negotiate an agreement between the Association [Alpa] and your Company"; (b) to O'Connell calling upon him and the Committee "to desist immediately" from the resumed negotiations; and (c) to President Manning of the Chapter, giving him copies of the earlier correspondence, and declaring the resumed negotiations "not authorized" by and not "binding" on Alpa.

The reply of Manning to Ruby (dated January 28) stated that the Alpa split "certainly ends our consideration of merger between the two organizations [i. e., Alpa and the Chapter] for the time being". It referred with some

bitterness to Alpa's "failure to intervene" at Eastern Airlines, where pilots eventually took over the jobs of the flight engineers. It warned that for Alpa to "press" its disagreement with the American pilots might lead to a strike or to lengthy litigation, either of which would be "unfortunate", and it suggested a request for help to the Secretary of Labor and to Chairman Edwards.

(241) The reply of the Company to Ruby (dated January 28) expressed a willingness to "confer generally" on January 30 but in effect refused to negotiate with Ruby—"a separate and duplicating negotiating session". The reply also stated that whether Alpa became a party to any agreement negotiated by the American pilots was "an internal matter" for Alpa.

A meeting between Ruby and the Company did take place on January 30, but (as might have been expected) it solved nothing. Apparently Ruby tried to get a negotiation started between American and the Alpa Home Office, but he was not successful. The Company asked how another committee of American pilots could be designated; according to all past Alpa practice, negotiations were conducted by a committee of pilots employed by the particular air line and appointed by the MEC, and such a committee was already in existence. Ruby evidently had no solution for this problem; he contemplated "bringing the existing committee in or whatever arrangement was necessary". The fact is that no substitute or other committee was ever appointed or arranged for by Alpa.

Ruby next instructed Christie, Director of Agreements for Alpa (a staff member), to present himself to American as "the duly appointed Representative". The efforts (242) of Christie were not successful. He went to New York but apparently did not attempt to enter the negotiating sessions. At the suggestion of Chairman Edwards, American officials talked to Christie (with mediator Schoonover present) but nothing came of it.

The Executive Board (as distinguished from the Executive Committee) of Alpa met at Chicago on February 5, 6 and 7. There were about 86 persons in attendance, including O'Connell; also present were other members of the American pilot's committee and of the American MEC. The Executive Board adopted resolutions (a) endorsing Ruby and his interpretation of Alpa policy; (b) declaring that the American MEC and Negotiating Committee "are not the bargaining representative of the American pilots"; (c) directing Ruby or his representatives to negotiate and conclude an agreement with American; and (d) finding the acts of the American MEC and Negotiating Committee "not in the best interests of Alpa".

Under date of February 8, Ruby sent copies of the resolution to the Company, to O'Connell, and to the American MEC.

The Company's reply again stated that it had "no choice but to go ahead (that is, to continue negotiating (243) with the committee of American pilots), again referred to the advice of Chairman Edwards that it do so, and expressed an inability to see any "way in which separate negotiations can be started".

On February 16, Ruby (accompanied by Alpa counsel) discussed the situation in New York with Company officials. The latter stated that the Company had wanted an agreement with Alpa, was sorry to be in the middle of such a problem, but as between Alpa and the Company's own pilots felt obliged to deal with its pilots.

On February 19, Ruby authorized McMurray and Christie (two staff members of Alpa) to try to start "proper negotiations" with American.

On February 21, McMurray and Christie appeared at a negotiating session in New York. Garvey (a member of the pilot's committee) asked Christie to leave. He and McMurray both left and shortly afterwards McMurray returned with Chairman Edwards and Whitacre. McMurray remained in the session for a while and then left, but

before leaving stated that the pilot group did not represent Alpa and that the negotiations were illegal, to which Chairman Edwards took exception.

(244) There were no further contacts by the Alpa national organization with any of the parties and this action was commenced by Alpa on March 1, 1963.

15. Resumption of Joint Pilots—Engineers Negotiations with the Company; the Substitute Pages; Joint Negotiations Ended by Engineers

After the Company had decided to bargain with the pilot's Negotiating Committee rather than with the Alpa Home Office, meetings began on January 17, 1963, between the Company and the two committees, one for pilots and one for engineers.

The assumption in these negotiations was that the two unions—one for pilots and one for engineers—would be merged into one union in the cockpit and that one agreement (that being negotiated) would cover both pilots and engineers.

Until a merger agreement between the two unions had been made, there necessarily was separate bargaining representation for pilots and for flight engineers. While the negotiating sessions were at times joint and while O'Connell at times acted as chief spokesman for the two committees, it was understood between them that the flight engineers would negotiate their own wages and that their separate representation (245) had not been given up. This was an entirely natural arrangement, not only because at that stage the engineers did not want to put themselves entirely in the hands of the pilots, but also because the pilots themselves hesitated to assume such a responsibility.

Thus as between pilots and engineers, there was no question but that the Chapter continued to be the representative of the engineers. The pilots did not purport to act for the engineers. As O'Connell testified: "We con-

sidered ourselves the pilot committee". The pilots never used the expressions "joint committee" or "joint negotiating committee". Especially considering the tentative and dependent character of the arrangements being worked out, there was no reason for the Company to suppose that in advance of complete agreement the flight engineers had given up their separate representation.

a. The Substitute Pages

During the resumed meetings in January 1963, it became apparent to the pilots and to the Company that execution by Alpa of the agreements being negotiated was highly doubtful, to say the least. The letters from Ruby of January 11 and 18 and his telegram of January 18 gave added confirmation.

(246) The December 1, 1962 "memorandum of agreement" covering crew complement had been drawn up for execution by Alpa (for the pilots) and contained a provision by which the engineers would give up their bargaining representation to Alpa. Feeling that Alpa participation was now not to be expected, the Company prepared new and substitute pages for those pages of the December 1, 1962 crew complement agreement on which the name of Alpa had appeared. This involved a change in the provision for the future merged union of pilots and flight engineers (because it had been assumed that the merger would be with Alpa) and thus for the future bargaining representative of the engineers. The new language proposed by the Company took account of the fact that it was not then known how the place of Alpa would be filled—what the organization would be. The new language in the substitute pages was that the engineers and pilots should be "consolidated into one craft or class unit", that the engineers agree that "their collective bargaining representative hereafter shall be the same as that which now or in the future is recognized by the Company as representing a

majority of its cockpit crew members", and that the Chapter gives up its representation rights to "said cockpit crew representative".

(247) These substitute pages were given by O'Connell to the engineers on January 24, were objected to strongly by the engineers, and were the subject of heated controversy with the Company until February 20. The position of the engineers was that under the substitute pages they were asked to give up their representation rights to whatever group the American pilots (or their then committee) decided, that this was an "unknown", and that before they would give up their representation rights they wanted to know with what organization they were dealing and also (importantly) the terms of their merger into such organization.

The Company asked Chairman Edwards for a letter approving the substitute pages but he felt unable to comply. Efforts through language revisions to overcome the objections of the engineers were not successful. On February 20, the Company withdrew the substitute pages and stated that it would stand on the December 1, 1962 wording of the crew complement agreement. This left the situation far from clear, because the December 1 wording was designed for execution by Alpa and if Alpa did not execute the document, it would be in major respects frustrated.

b. Dispute Over Representation of Engineers and end of Joint Meetings.

Meanwhile a further controversy arose between the (248) Company and the engineers. On January 31, the negotiations reached the subject of pay and retirement provisions for the engineers.

The basis of these negotiations was that one agreement would cover both pilots and engineers, who would belong to one union; indeed, the engineers were included under the term "pilots" in the draft agreements then being discussed.

The bringing of the pilots and engineers into a single representation was one of the advantages to the Company for which it was bargaining and making concessions.

The Company took the position that on and after November 1 the pilots and engineers were *already* one and that the engineers for collective bargaining purposes were being represented by a "Joint Negotiating Committee", of which O'Connell was chairman or spokesman. Accordingly, the Company position on January 31 was that pay and retirement provisions for engineers were matters for negotiation with the "Joint Negotiating Committee" and not with the engineers' committee separately; the Company declined to negotiate with the engineers' committee separately.

The engineers vigorously contested the Company's position and both verbally and in writing asserted the (249) continuing representation by the Chapter of the engineers as "a separate bargaining unit under the Railway Labor Act".

If there had been no dispute within Alpa itself, probably the engineers and the Company could eventually have found a compromise. But the difficulty was that Alpa and the American pilots had split, and in these circumstances the engineers were unwilling to give up their representation to the "unknown". The Company insisted without justification that they had *already* given up their representation to the "Joint Negotiating Committee".

Doubtless the attitude of the Company was influenced by a feeling that it was unfair for the engineers to demand separate representation while at the same time demanding, or expecting, the benefits promised by the Company in exchange for single representation of pilots and engineers.

Be that as it may, the fact is that the engineers had clearly not given up their separate representation, either to the "Joint Negotiating Committee" or otherwise. There is no evidence that the Chapter ever gave up its representation of the engineers; to the contrary, the evidence is that

until a merger with the pilots had been brought about, the Chapter (250) was to continue as before. That O'Connell or other members of the pilots' committee were requested, or permitted, to speak or to make proposals for the engineers was a matter of procedure, not of substance, and did not amount to any relinquishment or transfer of the Chapter's rights.

The joint sessions continued until February 21—the day after the withdrawal of the substitute pages—but the unresolved conflict between the position of the engineers and that of the Company finally resulted in refusal by the engineers to accept the demand of the Company for "joint committee" bargaining only; the engineers attended no joint sessions after February 21.

c. Events Leading up to Intervention by Engineers in This Action.

On February 26, the Master Executive Council of the American engineers had a meeting in Los Angeles. Whitacre and O'Connell were invited, and they addressed the meeting on separate occasions. Among other things, Whitacre indicated that the Company would continue its negotiations with the pilot committee until agreement was reached; that he had a lingering hope of acceptance by Alpa of such an agreement, even without the "C and I"; that if not and if the American pilots left Alpa and formed a separate organization with the engineers, (251) they would be better off and Alpa would later ask them to come back; and that he felt the Company had an agreement with the engineers on many important points, but was not "holding anybody to it". O'Connell said he hoped the engineers would accept the agreement negotiated by his Committee.

At this meeting in Los Angeles on February 26, the engineers' MEC resolved to ask the help of top officials of the AFL-CIO to resolve the several intra and inter union disputes. These officials made an effort, but there was no success.

Chairman Edwards then attempted to bring the engineers and the Company together again; meetings were held with him by the Company and the engineers on March 6, 8 and 12. The Company would not call these meetings "negotiations" because it maintained the position that it would negotiate with the flight engineers only through the "Joint Negotiating Committee"; the Company called these March meetings "bull sessions" and although many ideas were exchanged, nothing was settled.

Under the May 1, 1958 agreement between American and the Chapter, notice of intended change under Section 6 of the (252) Act could be given as to any provisions of the agreement (whether related to compensation or not) at least 60 days before its expiration on April 30, 1963. Under date of February 28, 1963, the Chapter gave notice to the Company of a desire to change numerous sections of the May 1, 1958 agreement, including sections 5 and 6 as to compensation and as to which notices of intended change had already been served by the Company and by the Chapter in February 1961. The Chapter suggested that a meeting to negotiate could "take place at any convenient time satisfactory to the Company".

Under the same date of February 28, 1963, the Company gave notice to President Manning under Section 6 of the Act of its intended changes in "existing agreements". The Company referred, however, to "current negotiations with the Joint Committee of pilot and flight engineer representatives" and suggested that bargaining "continue under the auspices of the Joint Committee and Mr. Leverett Edwards".

The Chapter, under date of March 7, 1963, notified the Company that it would not bargain through any "Joint Negotiating Committee", that there had been no transfer or release of its rights as bargaining representative of the engineers, and that agreements as to the engineers were (253) therefore required to be negotiated with it; the Chapter stated that it was prepared to meet with the Company "immediately".

There was no response by the Company, which apparently maintained its position of bargaining with the flight engineers only through the "Joint Negotiating Committee".

The Chapter and its president then moved for leave to intervene and serve a complaint in this action. The motion was granted on consent on March 19, 1963.

March 22, 1963, the Chapter notified NMB that it would agree to arbitrate all issues in dispute with American. On March 28, 1963, American notified NMB that it would not arbitrate, because the Chapter's agreement to arbitrate came too late (after its June 19, 1962 refusal) and that intervening events had made arbitration "inappropriate".

"16. The Company and Pilots Reach Agreement on March 15

Despite the withdrawal of the engineers from the joint sessions, the Company and the pilots' committee continued their negotiations for an overall agreement (or group of related agreements), including provisions (254)' affecting the engineers.

During these negotiations and on March 5 and 6, O'Connell reviewed the situation with seven former American MEC chairmen (going back to 1941 or 1942) and with Chairman Edwards. The former MEC chairmen gave O'Connell a written statement approving his efforts to secure a new agreement with the Company and declaring that "nothing should be allowed to delay or interfere with the implementation of this Agreement".

On March 15, the negotiations were concluded and all agreements were then in form satisfactory to the Company and to the pilots' committee (these agreements will be sometimes referred to for convenience as the "March 15" agreements).

There was a so-called "basic working agreement" and related supplementary agreements, including that covering the crew complement question. The March 15 basic work-

ing agreement covered both pilots and engineers, as to compensation and everything else; the engineers are called "Flight Officers" and are also included in the term "pilot"; this agreement was designed to be executed by one bargaining representative for all "pilots", including engineers. The March 15 crew complement agreement is the same as that initialed on December 1, 1962; (255) it contains the name of Alpa in all appropriate places; it was designed to be executed by Alpa, by the Chapter, and by the Company. With the positions of the parties as they were on March 15, it was of course impossible to carry out the scheme contemplated by the March 15 agreements because Alpa had already commenced this action and could not consistently execute the agreements.

Copies of the March 15 agreements arrived at with the pilots were, at their request, provided to them by the Company; likewise the Company on occasions furnished rooms for negotiating sessions, secretarial help, coffee, etc. In volume this appears to have been *de minimis* and in any event it did not differ from what had been the practice in all past negotiations.

After Alpa and the American pilots had split apart, O'Connell (Master Chairman of American MEC and ex-officio a member of the Negotiating Committee) discussed with Lamond (Vice-president of American for flight) whether the pilot members of the committee could later be reimbursed by the Company for flight pay lost during the negotiations. This came about because such lost flight pay had in the past been paid to the pilots by Alpa itself, but this was no longer to (256) be expected and on January 24, 1963 Ruby notified the American pilots that no further payments would be made. When the subject was raised by O'Connell, the most Lamond would promise was to "consider" it in the future if it were "legal" under the Act. There was no promise of any such payment; there is no evidence that any such payments have been made; and

there is nothing in the incident which could possibly amount to unlawful assistance.

17. Formation of Allied Pilots Association; its Application to NMB

On March 19 through 22, the American MEC met in New York. The March 15 agreements were unanimously ratified. Ruby was invited to some of the sessions; he did attend and spoke to the group. Among other things, Ruby said that Alpa would not recognize any agreement negotiated by the pilots' committee and that he, as Alpa President, would not sign any such agreement if it did not contain a requirement of a "C and I" for flight engineers.

Anticipating that President Ruby would not sign the March 15 agreements, the MEC authorized the formation of a new organization—Allied Pilots Association—to take over representation of American Pilots. O'Connell was named temporary president, other temporary officers were named and (257) the members of the MEC (that is, the elected captain and co-pilot representatives of each Local Council on American) became the acting directors of the new organization.

There is no evidence that the Company suggested, encouraged or even knew in advance about the determination of the American pilots to leave Alpa over the "C and I" issue and form their own organization.

Under date of March 28, Whitacre wrote to O'Connell confirming certain understandings as to the rates of pay and retirement benefits for engineers and adding that as to retroactive pay for engineers the Company "stands ready to meet with the Joint Committee"; apparently neither this letter nor the March 15 agreements were given to any of the engineer representatives.

The American MEC at its March 19-22 meetings had instructed O'Connell to make one last effort to have the March 15 agreements executed by President Ruby for Alpa.

O'Connell obtained from the Company copies of the March 15 agreements with the name of Alpa in all appropriate places and on the morning of March 29 asked President Ruby to execute them. Ruby asked that the agreements be left with him (258) for study; O'Connell refused; Ruby did not sign.

On April 12, Allied sent out to all American pilots cards which if executed would authorize Allied to be the collective bargaining representative under the Act of the pilot so executing and on his behalf to ask for certification under Section 2 Ninth of the Act (45 U. S. C. A. §152 Ninth).

On April 24, Allied filed with NMB an application, stating that a "representation dispute" had arisen among American pilots as to their representative under the Act and asking for an investigation and certification under Section 2, Ninth, of the Act. The "craft or class of employees involved" was said by Allied to be "pilots and co-pilots"; the total number of these was said to be 1600; and the total authorization cards submitted by Allied was said to be 1150.

At this point, the taking of evidence on these motions had been going on for some time, and at the opening of Court on April 25 an affidavit of O'Connell was submitted, setting forth the developments as to Allied and its application to NMB. Counsel for the additional defendants moved, or strongly suggested, that the motions of plaintiffs and (259) intervenors were moot, but their counsel opposed. Argument on this point was heard, the proceedings temporarily adjourned, and the following day a memorandum decision was filed directing that the hearings resume on April 30 and proceed to completion.

On April 26, O'Connell and all other members of the American Negotiating Committee (except Miller, who had resigned February 18, 1963) were expelled from Alpa. The grounds for expulsion do not appear in this record but since there were pleas of guilty by the American pilots, it may be surmised that expulsion was for "failing to comply

with a decision of . . . the Executive Board, the Executive Committee . . .", etc.

18. Recognition of Allied by the Company; Second Suggestion of Mootness

The hearings did resume on April 30 and were completed and the record closed on May 3; final briefs were received on May 27.

Apparently Alpa requested NMB to defer passing on the certification application of Allied until decision of the pending motions in this action. On May 24, NMB denied this request.

(260) On June 12, the NMB mediator reported that 1571 pilots and co-pilots of American were eligible to vote for a collective bargaining representative and that Allied had been given authorization by 1334 of these, or in excess of 84%.

NMB then ordered an election to be held among American pilots and co-pilots to decide whether Alpa or Allied would represent the pilots. No such election has taken place, however, because of an action commenced by Alpa against NMB in the District of Columbia and because of orders made by the Court therein.

On June 19 and July 3, Allied demanded of the Company recognition as collective bargaining representative of all American pilots and co-pilots.

On July 9, the Company recognized Allied as such representative and on the same day signed certain collective bargaining agreements with Allied, effective July 9, 1963.

On July 11, an affidavit of Whitacre was filed in this action, setting forth the most recent developments above mentioned and supporting a suggestion, filed on the same day by counsel for the Company, that the motions are now moot.

(261) The suggestion of mootness by the Company as to the pending motions is based on (1) the recognition by

the Company on July 9, 1963 of Allied as collective bargaining representative of the pilots, (2) the execution of collective bargaining agreements between Allied and the Company covering pilots and (3) the sending of a letter by the Company on July 11, 1963 to President Manning stating that the Company is "now prepared to resume bargaining" with the Chapter.

Copies of the July 9 agreements have been submitted by the Company. They differ significantly from the March 15 agreements because they do not cover, or purport to cover, or to affect in any way, the flight engineers; the December 1, 1962 crew complement agreement has not been executed.

3.

It must first be determined whether, as urged by defendant and additional defendants, the present motions are now moot. Plaintiffs and intervenors insist that they are not.

As to the issues raised by Alpa, the Company says that any status which Alpa may have had at one time is now lost through the July 9 recognition of Allied; that Allied is not a party to this action; and that the execution of the new agree- (262) ments is outside the scope of this action.

These may be arguments against the issuance of an injunction but they certainly do not show that all controversy has been eliminated and the motions become moot. The arguments do not really raise any issue of law as to mootness, because they do not meet the charges and grievances asserted by plaintiffs.

The organization of Allied, its recognition by the Company, and the execution of a collective bargaining agreement between Allied and the Company are not acts separate and independent from those on which plaintiffs base their claims. On the contrary, they follow from and are intimately related to the facts developed on these motions.

What Alpa argues is that there were violations of the Act and that the effects of these violations are continuing.

Indeed, the Alpa argument is that new facts on which the Company relies are themselves the result of the alleged illegal acts and that this Court has a duty under the Act to see that defendant does not enjoy these benefits of the alleged unlawful acts.

In the face of such arguments, it seems entirely clear (263) that the motions of Alpa are not moot and must be decided on their merits.

But even if the matter were regarded as doubtful, it would seem the better course to decide the issues tendered by plaintiffs rather than to declare them moot. On any appeal, the matter would then be fully before a higher court rather than in fragments.

The intervenor flight engineers are in a different factual situation from Alpa. As to the engineers, the Company now declares (under date of July 11, 1963) that "[b]ecause of these developments" (namely, the execution of agreements with Allied, etc.), it is "now prepared to resume bargaining with AAL Chapter, FEIA." The Company further declares that, at its request, Allied "has given us assurances for the protection of flight engineers".

The Company says that the intervenors sought a Court order directing it to bargain with the Chapter; that it is ready to do so and has declared its readiness to the Chapter in writing; and that accordingly no Court order is needed and the motions of intervenors are moot.

(264) The problem frequently arises whether an injunction should issue where the acts complained of have been discontinued during the litigation. See Diamond, Federal Jurisdiction to Decide Moot Cases, 94 U. Pa. L. Rev. 125, 137-146 (1946).

It is well settled that "the Court's power to grant injunctive relief survives discontinuance of the illegal conduct". *U. S.* v. *W. T. Grant Co.*, 345 U. S. 629, 633 (1953). As explained by the Supreme Court in the *Grant* case, this is because

> "A controversy may remain to be settled in such circumstances. . . . e.g., a dispute over the legality of the challenged practices. . . . The defendant is free to return to his old ways. This, together with a public interest in having the legality of the practices settled, militates against a mootness conclusion. . . . For to say that the case has become moot means that the defendant is entitled to a dismissal as a matter of right. . . . The courts have rightly refused to grant defendants such a powerful weapon against public law enforcement."

The burden on a defendant asserting mootness by discontinuance of illegal acts is "a heavy one" (345 U. S. at 633). And in the *Grant* case, where refusal of an injunction was upheld as an exercise of discretion, the Supreme Court nevertheless concluded that "the actions were not moot" (345 U. S. at 635).

In the case at bar, the circumstances strongly suggest that the motions of intervenors should be decided on (265) their merits. If it be assumed—as it must be for present purposes—that the engineers have established violations of the Act, then it would seem that they ought to receive a protective injunction even though the Company's attitude may have changed. No bad faith on the part of the Company need be even suggested in this connection. Its present attitude is accepted as genuine and sincere. But that attitude can change; and of course the individuals determining the Company's attitude themselves change as retirements, promotions and replacements occur. Moreover, there is no admission or recognition by the Company that its attitude toward the engineers has been wrongful. This is a factor also to be considered. *U. S.* v. *Aluminum Co.*, 148 F. 2d 416, 448 (2d Cir. 1945). The Company's changed attitude is not the result of a recognition of its duties as claimed by the engineers; rather the change is based on the recognition of Allied and its "assurances" respecting the

engineers. If it be assumed that the engineers' claims on these motions are well founded, they should not be required to rely solely on "assurances" by Allied and on the dependent changed attitude of the Company.

And if the matter be doubtful, the same considerations as to a possible appeal are here present, as in the case of Alpa.

(266) The suggestion that the motions are moot is therefore rejected.

II

Once the facts have been analyzed and considered chronologically, the disposition of Alpa's motions is not difficult.

These motions ask in substance that a preliminary injunction issue directing the Company to bargain with Alpa as the "true representative" (300 U. S. at 548) of its pilot employees and restraining any bargaining as to pilots with any other group.

Whatever may have been the situation when the motions were made, since April 24, 1963, a proceeding has been pending before NMB to determine whether Alpa or Allied is the "true representative" of the pilots and NMB has ordered an election, on the basis of which NMB will certify the "true representative".

But whether NMB proceedings are pending or not, this Court is without power to find that Alpa is the "true representative" and entitled to the relief sought. The "administrative remedy" before NMB is "exclusive". *General Committee* v. *M-K-T Ry. Co.*, 320 U. S. 323, 336 (1943). (267) This principle has been recently recognized and followed in this Circuit where the dispute was over the "true representative" of flight engineers on an air line. *Flight Engineers Inter. Ass'n* v. *Eastern Air Lines, Inc.*, 311 F. 2d 745 (1963).

In the two cases cited, no proceedings to determine the "true representative" were in fact pending before NMB

but it was held that Congress had "excluded" the Courts from this "field" (311 F. 2d at 748).

In an interesting recent case having some parallel aspects, a railroad bargained with the national parent union and made an agreement. One of the local unions (part of the national organization) challenged the agreement as violative of the Act, asserting that the local was the "true representative" rather than the parent national union. The Courts were held to be without jurisdiction of the matter. *Division No. 14, Order of Railroad Tel.* v. *Leighty,* 298 F. 2d 17 (4th Cir. 1962). It was said that such disputes ought to be resolved within the union but that "if these intra-organizational efforts are challenged, Board action [i.e., NMB], not judicial intervention is indicated" (298 F. 2d at 21).

The argument for Alpa is that there are issues here beyond the identity of the representative; that there has been (268) influence and coercion by the Company in the choice by pilots of their representative, in violation of the Act, specifically Section 2, Third and Fourth (45 U. S. C. A. §152, Third and Fourth); that the Company assisted in the formation of Allied, in violation of Section 2, Fourth of the Act (45 U. S. C. A. §152, Fourth); that the effects of these violations continue; and that the Company should be prevented by this Court from securing any benefit from the alleged violations. The logical consequence of such an argument is that the Court should disqualify Allied as a possible representative, even though it might have the support of a majority of the pilots. The Court, according to Alpa, has such jurisdiction "independent of the National Mediation Board".

Apparently Alpa would agree that NMB has exclusive jurisdiction where the issue is simply to decide which of two rivals has majority support. But where violations of the Act—influence, coercion, assistance—are alleged, Alpa argues that this Court has an independent jurisdiction. At least under the conditions here present, I cannot agree.

The existence and effect of unlawful influence, coercion and assistance seem inseparable from all other matters to be determined by NMB under Section 2, Ninth of the Act. After all, (269) what Alpa is saying in effect is that because of influence, coercion and assistance by the Company, Allied (even though it might have majority support) cannot replace Alpa as the "true representative". This is the very question which Congress has committed to NMB, and not to the Courts.

Counsel for Alpa concede that where NMB acts under Section 2, Ninth, in a representation dispute, it deals with charges of unlawful interference, coercion and assistance. There is authority that the jurisdiction of NMB in these particular matters is exclusive. *WES Chapter, Flight Eng. Int. Assn.* v. *National Mediation Bd.*, 314 F. 2d 234 (D. C. Cir. 1962). An election was held by NMB to determine whether WES Chapter or SOA was the "true representative" of flight engineers; NMB certified SOA. An action was then commenced by WES Chapter to vacate the election and for injunctive relief. It was claimed (a) that eligible engineers had been excluded from voting and (b) that NMB had not investigated fully "the charge that SOA was dominated and assisted by the employer" (314 F. 2d at 235). It was held that the Courts could not assume jurisdiction of such questions; as to domination and assistance it was said (314 F. 2d at 237):

> "The Association charged that SOA was assisted and dominated by the employer in violation of Section 2, Third (270) and Fourth, of the Act. The Board held a hearing on these charges, taking pertinent testimony but declining, because of lack of power, to compel attendance of certain witnesses requested by the Association. The statute, in Section 2, Ninth, requires an 'investigation' of such disputes; and the Board, it seems to us, did investigate. In a different case, where, for example, a

stronger showing is made initially by the charging party than was made here, the Board might be required to make a more independent investigation into a charge of company assistance to an opposing union seeking certification. But in discharging its duty to investigate in the manner it did in this case we find no official conduct in excess of authority and no refusal to bring the processes of the Board to bear in a reasonable manner on the dispute. Accordingly we do not think the District Court acquired jurisdiction to upset the Board's ruling that the Association's charges were without merit."

See also *Order of Ry. Conductors* v. *National Mediation Board,* 141 F. 2d 366 (D. C. Cir. 1944).

The findings of fact already made would preclude granting the motions of Alpa in any event. There is no showing of influence or coercion on the part of the Company nor any unlawful assistance by the Company in the break away from Alpa and in the organization of Allied.

The Company had nothing to do with the creation of the dispute within Alpa, nor is there any evidence of any preference by the Company not to have Alpa. The single remark attributed to Whitacre in February 1963 does not affect this conclusion; it was insignificant in character and was not (271) addressed to any pilots who might be affected thereby, but to flight engineers.

The fact that the Company continued to deal with the Negotiating Committee was not in my view any violation of the Act, considering that the Company acted in good faith, reasonably, without any practical alternative, and without any anti-union motivation.

Nothing in the two cases on which Alpa chiefly relies is to the contrary.

In *Virginian Ry.* v. *Federation,* 300 U. S. 515 (1937) there was no question about who was the "true representative" of the employees. There had been an election

and a certification by NMB (there has never been any certification of Alpa). The question was whether there was a "legally enforcible obligation" (300 U. S. at 541) under the Act to bargain with the "true representative"; the petitioner railroad also argued the unconstitutionality of the Act.

In *Medo Corp.* v. *Labor Board,* 321 U. S. 678 (1944) the jurisdiction of the Court was not in doubt; the proceeding was on petition of the National Labor Relations Board to enforce its order requiring Medo to bargain with the union, etc. (29 U. S. C. A. (272) §160(e)). Moreover, the employer had induced the employees to leave the union by giving them a wage increase; here American displayed no interest in whether its employees left Alpa or not, certainly made no promises conditioned on their leaving Alpa or to induce them to leave Alpa, and at all times was willing to make agreements with Alpa if its own employees so desired. Also in the *Medo* case, the employer ceased and refused to deal with the union and instead dealt *directly* with the employees; here American continued to deal at all times with the same *representatives* of the employees, namely, the Negotiating Committee and the American MEC which finally caused the organization of Allied.

For the reasons set forth, the motions of Alpa must be denied.

III

The application of *Virginian Ry.* v. *Federation,* above, to the facts as found requires that the Chapter, representing American flight engineers, be given relief by way of a temporary injunction.

There is no doubt whatever that the Chapter is now, and at all relevant times has been, the "true representative" under the Act of the "craft or class" of flight engineer (273) employees of American. It was so certified by NMB on May 25, 1955. There has since that time

never been the slightest evidence from which the Company could conclude that the Chapter no longer represented such employees. No one else now claims, or has ever claimed, to represent the flight engineers.

From at least as early as January 31, 1963 to July 11, 1963, the Company refused to bargain collectively with the Chapter, and until at least as late as March 15, 1963 the Company instead bargained collectively in respect of flight engineers only with a committee, of which O'Connell was Chairman, and which the Company claimed represented the flight engineers.

The situation seems to be exactly the same as in the *Virginian Ry.* case and in many later cases where the "command" of Congress expressed in the Act must "be enforced by the Courts" (300 U. S. at 543). The arguments by defendant and the additional defendants that the Norris-La Guardia Act (29 U. S. A. §101 and following) is applicable and prevents an injunction are without merit. They were rejected in the *Virginian Ry.* case where the Supreme Court declared that the provisions of the Railway Labor Act authorizing relief by injunction "cannot be rendered nugatory by the earlier and more general provisions of the Norris-LaGuardia Act" (300 U. S. (274) at 543). See also *Brotherhood of Railroad Trainmen* v. *Chicago River and I. H. Co.*, 353 U. S. 30 (1957); *Telegraphers* v. *Chicago & N. W. R. Co.*, 362 U. S. 330 (1960).

Whether mentioned specifically herein or not, the Court has given careful consideration to all arguments of the Company in opposition to the motions of intervenors.

The principal contention of defendant is that the Chapter is "estopped" because of its participation in joint negotiations and because of statements said to have been made by counsel and by President Manning on November 1, 1962, that the flight engineers were merged with the pilots and that there was a single craft or class. The difficulty is that the facts do not support such contention. The representations as claimed were never made by the engineers

and, if they had been, the Company could not reasonably have relied on them; indeed, the Company did not rely on them. The situation was perfectly clear. From November 1, 1962 the parties were hopefully negotiating for a complete agreement which *if reached* would include merger of pilots and engineers on American into a single craft or class; as Whitacre testified, the negotiations were "subject to a complete agreement". Plainly, until that "complete agreement" was reached, there was no merger of pilots (275) and engineers and no single craft or class.

The Company also urges that it made "substantial concessions" because of the conduct of the engineers and that the engineers have not lived up to "prior commitments". But these contentions do not square with the facts. The engineers have received no "concessions", substantial or otherwise. The Company—like the other parties—is bound to nothing which it promised or settled or discussed in the negotiations, this because everything was "subject to a complete agreement". The so-called "prior commitments" of the engineers are subject to the same infirmity; they were all "subject to a complete agreement" which never came about.

The Norris-LaGuardia Act has already been found to be inapplicable here. It should be noted, however, that the intervenors in any event and on this record are shown to have complied with "every obligation imposed by law" and to have made "every reasonable effort" to settle the dispute. If their efforts were frustrated, the Company has at least some responsibility because it failed to deal with the Chapter as the "true representative" of the flight engineers.

The intervenors are by their present motions in form asking for a preliminary injunction, as opposed to a final (276) injunction after trial. But in fact there have been extensive hearings, the taking of much testimony and the reception of other evidence; it is difficult to see how a trial of the action would yield any significant further information. Under the circumstances, irreparable injury to

intervenors may result unless a preliminary injunction issues at this time. The contract under which the flight engineers were employed from May 1, 1958, expired on April 30, 1963. A new contract must be negotiated. The damage to intervenors if a preliminary injunction were denied outweighs any foreseeable harm to defendant or to the additional defendants; indeed defendant stated in its July 11, 1963 letter that it was prepared to bargain with the Chapter.

The motions of intervenors are accordingly granted.

IV

American has moved for an order under Fed. R. Civ. P. 53 referring to a master the question whether its "flight deck employees desire the Joint Negotiating Committee to continue to act as their bargaining representative". It is said that this determination is "relevant" to the Company's "defense". Whatever the merits or demerits of the motion may once have been, the passage of time and the disposition (277) of the other motions have eliminated any necessity for such relief to the Company. The motion is accordingly denied.

The foregoing opinion sets forth the findings of fact and conclusions of law as required by Fed. R. Civ. P. 52(a).

Settle orders separately as to (a) the two motions of plaintiffs, (b) the two motions of intervenors, and (c) the motion of defendant. Suggestions are invited from counsel as to the amount of security to be required of intervenors under Fed. R. Civ. P. 65(c). Settlement of the orders should be noticed for noon on Friday, August 16, 1963 or at any earlier time by which counsel for all parties will have completed submission of their papers.

Dated: New York, New York
August 12, 1963

INZER B. WYATT,
United States District Judge

Opinion of the District Court.

Summary Judgment.

(279) WYATT, District Judge.

This action was commenced on March 1, 1963 and is at issue on pleadings which have been completed, including an amended complaint of plaintiffs, filed April 12, 1963.

Motions by plaintiffs and by intervenors for preliminary injunctions, and by defendant for a reference (280) to a master, have been determined by an opinion (with findings of fact and conclusions of law) filed earlier on this day.

The motions now before the Court are (1) a motion by plaintiffs for summary judgment in their favor under Fed. R. Civ. P. 56 (reserving the amount of damages for determination at a hearing) and (2) a motion by defendant to strike an affidavit of Charles H. Ruby, sworn to June 8, 1963, and Appendix A thereto on the ground that said affidavit and appendix (submitted in support of the motion by plaintiffs for summary judgment) violate Fed. R. Civ. P. 56(e) and General Rule 9(g) of this Court.

The additional defendants not only oppose the motion for summary judgment in favor of plaintiffs but, without formal cross-motion, request that summary judgment be entered in favor of the additional defendants.

The opinon, findings of fact, and conclusions of law earlier filed herein by the Court determine that there is no genuine issue as to any material fact, that the issues tendered by plaintiffs in their complaint are cognizable only by NMB because "the administrative remedy is exclusive" (320 U. S. at 336), and that in any event the plaintiffs have no case on the merits.

Where a motion for summary judgment has been made (281) under Fed. R. Civ. P. 56, the District Court has authority to enter a summary judgment against the moving party even though there has been no cross-motion for summary judgment. *Local 33, Int. Hod Carriers, etc.* v. *Mason Tenders, etc.*, 291 F. 2d 496, 505 (2d Cir. 1961). The follow-

ing reasoning by Judge Medina in the cited case seems peculiarly applicable to the situation in the case at bar (291 F. 2d at 505):

> "Especially where there are several motions by the respective parties and the evidence of the facts bearing on the issues arising out of the complaint is all before the court in affidavit form, it is most desirable that the court cut through mere outworn procedural niceties and make the same decision as would have been made had defendant made a cross-motion for summary judgment."

Although the Court would grant summary judgment dismissing the amended complaint of plaintiffs on the merits, under *General Committee* v. *M-K-T Ry. Co.*, 320 U. S. 323 (1943) the proper disposition appears to be a dismissal for lack of jurisdiction over the subject matter. Accordingly, a summary judgment in favor of defendant and of the additional defendants against plaintiffs is granted and the Clerk is directed to enter judgment hereon dismissing the amended complaint of plaintiffs for lack of jurisdiction over the subject matter. (282) As to the intervenors, their claims are directed to be severed and proceeded with separately. Fed. R. Civ. P. 21.

The motion by defendant to strike the affidavit of Charles H. Ruby, and appendix thereto, is denied.

So ordered.

Dated: New York, New York
August 12, 1963

Inzer B. Wyatt
United States District Judge

Exhibit (1).

April 24, 1963

Mr. A. DiPasquale
Asst. Vice President-Labor Relations
American Airlines, Inc.
633 Third Avenue
New York 17, New York

Mr. Charles H. Ruby, President
Air Line Pilots Association, Intl.
55th Street & Cicero Avenue
Chicago 38, Illinois

Gentlemen:

We have an application from the Allied Pilots' Association to investigate a representation dispute under the provisions of Section 2, Ninth, of the Railway Labor Act among the following employees of the American Airlines, Inc.:

Pilots and Copilots

Mr. DiPasquale is requested to furnish the total number of employees covered by this application and he is also invited to submit any other statement he may care to make.

Our records indicate that the employees are presently represented by the Air Line Pilots Association, International and Mr. Ruby is invited to submit any statement he may care to make with respect to this application.

Very truly yours,

E. C. Thompson
Executive Secretary

CC-to: Mr. Nicholas J. O'Connell, Jr.
Acting President
Allied Pilots' Association
645 Paseo De La Playa—Apt. 302
Redondo Beach, California

Mr. Nicholas J. O'Connell, Jr.
c/o Martin C. Seham, Attorney at Law
205 West 34th Street
5-sad New York 1, New York

Exhibit (2).

NATIONAL MEDIATION BOARD

4:25 p.m.
5-8-63

W. B. WHITACRE—Vice President—Personnel
American Airlines
633 Third Avenue
New York 17, New York

CHARLES H. RUBY, Pres.
Air Line Pilots Assn., Int'l.
55th Street and Cicero Ave.
Chicago 38, Illinois

Mr. HENRY WEISS
Cohen and Weiss
50 East 42nd Street
New York 17, New York

NICHOLAS J. O'CONNELL, JR.
Acting Pres.
Allied Pilots' Association
645 Paseo De La Playa—Apt. 302
Redondo Beach, California

MARTIN C. SEHAM, Esq.
205 West 34th St.
New York 1, New York

A. ALFRED DELLA CORTE
Bristol Hotel
New York, New York

Application of Allied Pilots Association for investigation of representation dispute among pilots and copilots of American Airlines, Inc. has been assigned our File C-3351. Mediator A. Alfred Della Corte will be at Bristol Hotel New York City on Friday, May 10, 1963 to commence

Exhibit (4).

preliminary investigation. Please acknowledge and advise who will represent you. Joint Whitacre, Ruby, Weiss, O'Connell, Seham, Della Corte.

E. C. THOMPSON
Executive Secretary
National Mediation Board

4/js

Exhibit (4).

[LETTERHEAD]

May 16, 1963
CASE No. C-3351

NATIONAL MEDIATION BOARD
1230 Sixteenth Street, N. W.
Washington 25, D. C.

Dear Sirs:

On May 10 Mr. Della Corte requested that we submit a statement of our position in this proceeding. This has been done in the Petition for Leave to Intervene which we are today filing with the Board, copy of which is enclosed.

I have two additional comments on statements made to the Board by others:

1. The telegram of Mr. Henry Weiss, General Counsel, Air Line Pilots Association, dated May 6, 1963, states that ALPA has brought an action in the U. S. District Court in which ALPA has alleged that American Airlines and certain named pilots "independently and in concert with each other have been involved in assistance, influence and coercion of the affected employees in violation of the provisions of the Railway Labor Act . . ."

This allegation is irresponsible and patently untrue. As your records will show, the negotiations by American and

such pilots have been conducted at all times under the auspices of the Chairman of the National Mediation Board.

The facts completely refute any improper conduct. The settlement agreed to between American and its flight crews is based on a proposal *made by the pilots* when they were members in good standing of ALPA and during the course of negotiations presided over by ALPA. The falling out within the pilot group ocurred when ALPA, months after this proposal had been made by its own representatives, decided it would no longer support the proposal. Thus, ALPA, by its own actions, has created the breach that resulted and has driven over 90 percent of the pilots of American to indicate in writing their preference for another organization. ALPA's view that these pilots must have been improperly influenced because they disagree with ALPA, assumes that they are so lacking in intelligence or inexperienced with respect to collective bargaining as to be incapable of deciding what is in their own best interests.

2. The letter from Mr. Asher Schwartz, counsel for American Airlines Chapter, Flight Engineers' International Association, dated May 8, 1963, states with reference to the litigation referred to in 1 above, that "one of the substantial issues which the U. S. District Court is now considering, and upon which the Court will issue its decision" is whether "the flight engineers have become part of the craft and class of pilots, in accordance with the Board's decision in Case No. C-2946."

On May 10, two days after writing the above letter, Mr. Schwartz took the contrary position before the same Court in the Dues Check-off Case, Civil Action No. 63-1187, as shown in the following colloquy:

> "The Court: I am confident of that, to determine craft or class is not a job for the Court.
>
> "Mr. Wisehart: That is certainly our position, your Honor. Perhaps Mr. Schwartz sees it differently.

Exhibit (4).

"Mr. Schwartz: No, sir, I do not see it differently" (Tr. 14).

It is apparent, contrary to Mr. Schwartz's assertion in his letter to you, that neither the Court nor Mr. Schwartz expects a judicial decision on the class or craft issue.

Thank you for this opportunity to present a statement.

Respectfully submitted,

W. B. WHITACRE,
W. B. WHITACRE,
Vice President—Personnel

Enclosure
4 Copies submitted

cc w/enc.: Asher W. Schwartz, Esq.
O'Donnell & Schwartz
501 Fifth Avenue
New York 17, New York

Martin C. Seham, Esq.
205 West 34th Street
New York 1, New York

Henry Weiss, Esq.
Cohen & Weiss
50 East 42nd Street
New York 17, New York

Exhibit (4).

BEFORE THE

NATIONAL MEDIATION BOARD

IN THE MATTER *of* Application of ALLIED PILOTS ASSOCIATION.	Case No. C-3351 **PETITION FOR LEAVE TO INTERVENE**

AMERICAN AIRLINES, INC. (hereinafter called "American") hereby petitions for leave to intervene as a party in the above entitled matter and in support of said petition makes the following statement.

I. INTRODUCTION

The application of the Allied Pilots Association is for the designation of that organization as bargaining representative of the pilots and copilots employed by American. American has additional reasons for intervening in this proceeding:

A. American has an interest in the craft or class of its employees determined by the National Mediation Board to be appropriate for bargaining representation.

B. American has negotiated a settlement of the crew complement dispute as well as a basic working agreement with representatives of its employees which may be affected by this proceeding.

C. American has an interest in defending itself against charges of improper interference, coercion, or influence made by the Air Line Pilots Association (hereinafter called "ALPA") in this proceeding.

Exhibit (4).

D. This proceeding has raised facts involved in pending litigation to which American is an essential party.

The interest of American would not be adequately represented by any of the present parties herein.

II. The Appropriate Craft or Class

1. The application of the Allied Pilots Association covers only pilots and copilots.

However, the only recent determination on this subject, C-2946 decided in 1961 relating to United Air Lines, holds that flight engineers should be included with pilots and copilots in the single craft or class of flight deck crew members (3 NMB Craft or Class Determinations 56).

2. In the early part of August 1962, American's pilot representatives proposed a crew complement solution based on single representation of flight deck crew members, with flight engineers to be covered in the pilots' basic working agreement. The solution included conversion from four to three-man cockpit crews on jet aircraft accompanied by a reduction in hours and improved working conditions. The pilot representatives undertook the responsibility of bringing in the flight engineers.

After a period of time in which alternative possibilities were discussed, American accepted the pilots' proposal.

3. Pilots and flight engineers negotiated on a merger agreement in October 1962. American did not participate in these negotiations.

On November 1, 1962, the pilots and flight engineers met jointly with American's representatives. At that meeting the flight engineers' representatives announced: (a) that negotiations on the merger agreement were substantially complete and it therefore was possible to proceed to negotiate a crew complement settlement without concern that the

merger agreement would cause an impediment in the future; (b) that "We're all pilots now"; and (c) that Mr. N. J. O'Connell, Jr., spokesman for the pilots' group, was spokesman for the flight engineers as well.

Present at that meeting were the Chairman of the National Mediation Board and Mediator Michael O'Connell.

4. American thereupon recognized the joint committee as representing both pilots and flight engineers, and negotiated with them on that basis for a period of approximately four months thereafter. In the course of such negotiations, American made substantial concessions benefiting both pilots and flight engineers in reliance on the continuing fact of single representation. Had single representation not been an accomplished fact, such concessions would not have been made.

(Benefits accorded flight engineers are set forth more fully in Mr. Whitacre's letter of March 28, 1963 to Mr. E. C. Thompson, which is incorporated as if fully set forth herein.)

5. During the month of November 1962, the parties jointly negotiated a crew complement agreement. This agreement is embodied in a document which was initialed on December 1, 1962 by representatives of the pilots, the flight engineers, and American, and delivered on that date to Mediator O'Connell for "redding out".

In the crew complement document so initialed by all the parties, flight engineers are called "pilots" and placed on the Pilots System Seniority List. The crew complement document also provides that flight engineers "shall be consolidated into one unit with other Pilots employed by the Company for the purpose of collective bargaining representation," and recites that "a majority" of the flight engineers having chosen the then collective bargaining representative of the pilots, the "AAL Chapter,

Exhibit (4).

Flight Engineers International Association hereby irrevocably relinquishes any right it may have to represent employees of the Company". The document contains special protection for the flight engineers in connection with the conversion from four to three crew members and makes a tri-partite grievance procedure available to them. It provides that the flight engineers ". . . shall be covered by the Pilots' basic agreement."

6. After completion of the crew complement document, the parties resumed negotiations on the pilots' basic agreement covering flight engineers as well as pilots. Contractual provisions settled thereafter were initialed only by American's representative and the chairman of the joint committee of pilots and flight engineers, on the assumption that single representation of the pilots and flight engineers was an accomplished fact. The flight engineers did not object to this procedure, although they were present and knew that it was being followed.

The flight engineers continued to attend the joint negotiating sessions until the end of February 1963, even though they learned of ALPA's objection at least as early as December 1962. Although the flight engineers no longer attended the meetings after the latter part of February, the pilot representatives remaining bargained as a joint committee, on behalf of and as representatives of flight engineers as well as pilots, and American recognized and treated with them in such capacity in the presence of the Chairman of the National Mediation Board. At the time when the basic agreement was settled, on March 15, 1963, the flight engineers had never repudiated the commitments which had been made concerning them by the joint committee.

III. The Settlement

1. The March 15, 1963 settlement mentioned above covers both pilots and flight engineers in one basic agree-

ment. Related agreements including the December 1 crew complement agreement also are part of the documentation comprising the settlement. All of the documents have been "redded out" as well as initialed and are in the custody of the Chairman of the National Mediation Board.

The settlement would result in a complete solution to the long-standing crew complement controversy between pilots and flight engineers and would provide for single representation.

2. The Allied Pilots Association was organized after the March 15 settlement. The pilots responsible for organizing the Association, however, were the ones who had negotiated the settlement. An identity of interest therefore exists and commitments and understandings of prior bargaining representatives are binding on their successors under the Railway Labor Act. It is the position of American that the March 15 settlement is binding on the Allied Pilots Association if it should be designated bargaining representative.

IV. The Charge of Coercion.

1. The negotiations leading to the March 15 settlement were initiated in July 1962 at the request of the Secretary of Labor for the purpose of resolving the crew complement controversy.

2. After the December 1 crew complement agreement was initialed, American learned that ALPA objected to certain of its terms. The president of ALPA asked that negotiations stop, but the AAL-MEC, the highest unit of ALPA with respect to American's pilots, unanimously passed a resolution on January 9 instructing its Negotiating Committee to continue negotiations. As to the flight engineers, the resolution contained the following recitation:

> "... the AAL Flight Engineers have indicated their unanimous desire to conclude and implement a crew

complement solution, a merger with the AAL pilots, which would result in one union in the cockpit, and a single contract covering all flight deck operating crew members on AAL. . . ."

3. American thereupon inquired as to the view of the Chairman of the National Mediation Board, who had participated in the past negotiations. He advised that, inasmuch as the parties were the same as those who had commenced to negotiate in July at the request of the Secretary of Labor, the negotiations should continue. American agreed to do so in reliance on this advice, the representations of the pilots, and the continuing participation of the flight engineers.

4. ALPA continued to object strenuously. Again an inquiry was addressed to the Chairman of the National Mediation Board and his reply, as reflected in negotiation notes of January 21, 1963, was in substance as follows:

"These are the best negotiations I've ever seen. Technically we are not in mediation—rather I have been commissioned by the Secretary of Labor to lend my services. If I thought there was anything illegal about these proceedings, I wouldn't be here."

5. The pilots with whom American resumed negotiations were the ones with whom negotiations had started and they constituted the official negotiators for American's pilots within the ALPA organization.

V. The Pending Litigation

American is a party in the litigation previously referred to in the United States District Court for the Southern District of New York. Because of a similarity of factual issues, these proceedings before the National Mediation Board may affect the disposition of such litigation or, conversely, such litigation may have a bearing upon these proceedings.

Exhibit (4).

VI. Conclusion

In support of this petition for leave to intervene, American also relies on Section 6(a) of the Administrative Procedure Act (5 U. S. C. A. §1005(a)) and Sections 2, 5, 6, and 203 of the Railway Labor Act (45 U. S. C. A. §§152, 155, 156, and 183), under which it hereby invokes the services of the National Mediation Board in connection with this dispute.

Wherefore, American's petition to intervene should be granted together with such other and further relief as may be just and proper.

Respectfully submitted,

Arthur M. Wisehart
Arthur M. Wisehart
Attorney for American Airlines, Inc.
633 Third Avenue
New York 17, New York
TN 7-1234

May 16, 1963

George A. Spater
H. Wayne Wile
Of Counsel

Exhibit (4).

VERIFICATION

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

WILLIAM B. WHITACRE, being duly sworn, deposes and says:

1. I am Vice President—Personnel of American Airlines, Inc.

2. I have read the statements of fact in the foregoing Petition for Leave to Intervene, and they are true.

3. I make this verification in my capacity as an officer of American Airlines, Inc., a corporation organized under the laws of the State of Delaware.

WILLIAM B. WHITACRE
WILLIAM B. WHITACRE

Sworn to this 16th day }
of May, 1963. }

NANCY L. MCCLURE
Notary Public

NANCY L. MCCLURE
Notary Public, State of New York
No. 30-2605775
Qualified in Nassau County.
Cert. Filed in New York County
Commission Expires Mar. 30, 1965

Exhibit (5).

RDAO13 125P EDT MAY 21 63 RA272
R NAI29 LONG PD WUX NEW YORK NY 21 1232P EDT
E C THOMPSON, EXECUTIVE SECRETARY, NATIONAL MEDIATION BOARD 1230 SIXTEENTH ST NORTHWEST WASHDC

YR TEL 5-20-63 FILE C-3351 THE PETITION FOR LEAVE TO INTERVENE WAS FILED SO THAT THE BOARDS ACTION WITH RESPECT TO THE APPLICATION OF THE ALLIED PILO TS ASSOCIATION WILL NOT PREJUDICE AMERICAN POSITION CONCERNING ITS RELATIONS WITH PILOTS AND FLIGHT ENGINEERS OR THE RELATIONS BETWEEN PILOTS AND FLIGHT ENGINEERS HOWEVER THE COMPANY DOES NOT BELIEVE THAT DESIGNATION OF THE PILOTS REPRESEN- TATIVE SHOULD BE DEFERRED PENDING RESOLUTION OF THOSE MATTERS. IT BELIEVES THAT LABOR HARMONY AND STABILITY ON AMERICAN AIRLINES REQUIRE A PROMPT DETERMI- NATION OF THE PILOTS WISHES. THEREFORE WITHOUT PREJUDICE TO AMERICANS POSITION CONCERNING THE ABOVE RELATIONSHIPS AND IN THE INTEREST OF ORDERLY PROCEDURE, AMERICAN SUGGESTS THAT THE PILOTS REPRESENTATIVE BE PROMPTLY DESIGNATED, AND THAT THE OTHER MATTERS RAISED BY AMERICAN BE HELD IN ABEYANCE PENDING SUCH DETERMINATION. AT THAT TIME, AMERICAN WILL SPECIFY IN GREATER DETAIL THE NATURE OF THE GROUNDS ON WHICH IT SEEKS TO INVOKE THE BOARDS SERVICES.

W B WHITACRE AMERICAN AIRLINES
5-20-63 C-3351

Exhibit (I).

NATIONAL MEDIATION BOARD
Washington

May 24, 1963
Case No. R-3619

Mr. W. B. WHITACRE, Vice President—Personnel
American Airlines, Incorporated
633 Third Avenue
New York 17, New York

Mr. CHARLES H. RUBY, President
Air Line Pilots Association, Intl.
55th Street & Cicero Avenue
Chicago 38, Illinois

Mr. N. J. O'CONNELL, JR., Acting President
Allied Pilots' Association
645 Paseo de la Playa, At. 302
Redondo Beach, California

Gentlemen:

Reference is made to NMB File No. C-3351 which covers an application filed by the Allied Pilots' Association on April 24, 1963 for investigation of a representation dispute among Pilots and Copilots of American Airlines, Inc.

This application was given a preliminary investigation by Mediator A. Alfred Della Corte commencing May 9, 1963, and his report has been received and considered by the Board. The Board has also been furnished certain information by the carrier and the attorneys for the Air Line Pilots Association, International and the Allied Pilots' Association.

The Board has reviewed all the information now in its possession and is of the opinion no issues have been raised which warrant further preliminary proceedings. Accordingly, the request of ALPA that the processing of this

Exhibit (9).

application be de[illegible]red pending the outcome of current litigation is denied

The Board, in executive session on May 24, 1963, directed that the application filed by the Allied Pilots' Association on April 24, 1963 be docketed as NMB Case No. R-3619 and a mediator will be assigned for further handling in accordance with the Board's usual procedures.

By direction of the NATIONAL MEDIATION BOARD.

/s/ E. C. THOMPSON
E. C. THOMPSON
Executive Secretary

4-ctm
cc-to: H. Weiss
M. C. Seham

Exhibit (9).

RDA004 835A EDT JUN 13 63 NHC012 SPOD086 BB239
B UDB022 GOVT NL COLLECT UD NEW YORK NY 12
E C THOMPSON EXECUTIVE SECRETARY

NATIONAL MEDIATION BOARD WUX WASHDC
R3619. TOTAL ELIGIBLE FIFTEEN HUNDRED AND SEVENTY-ONE. CHECKED THIRTEEN HUNDRED AND THIRTY FOUR ACCEPTABLE AUTHORIZATION CARDS FOR INVOKING PARTY REPRESTING EIGHTY FOUR PLUS PERCENT. RECOMMEDND MAIL BALLOT ELECTION AND REQUEST AUTHORITY TO PROCEED ACCORDINGLY

ALSO FORWARD SIXTEEN HUNDRED SETS MAIL BALLOT ENVELOPES INCLUDING INSTRUCTIONS FOR VOTING BY MAIL TO ME CARE AMERICAN AIRLINES PERSONNEL OFFICE 633 3RD AVE NEW YORK CITY

AADELLACORTE.

Exhibit (L).

NATIONAL MEDIATION BOARD
Washington

June 5, 1963
Case No. R-3619

Mr. HENRY WEISS
COHEN AND WEISS
50 East 42nd Street
New York 17, New York

Dear Mr. Weiss:

This acknowledges, and is in response to, your letters of May 27th and 31st, 1963.

The Board, in executive session, has fully considered your letters, and treats and regards same as a request for reconsideration of its previous ruling with reference to Section 2, Ninth proceedings in NMB Case No. R-3619.

The decision made in the third paragraph of our letter of May 24, 1963, copy attached for ready reference, is clear and unambiguous.

Your letters of May 27th and 31st, 1963 provided no basis for a reversal of the previous holding. Accordingly, the Board finds no reason to alter its previous ruling and the statutory mandate to progress its investigation of the question of representation which has been raised.

As you were previously advised, the Board will proceed with the handling of Case R-3619 in accordance with the provisions of Section 2, Ninth of the Railway Labor Act.

By direction of the NATIONAL MEDIATION BOARD.

E. C. THOMPSON
E. C. THOMPSON
Executive Secretary

4-ctm
cc-to: MR. WHITACRE
MR. O'CONNELL
MR. RUBY
MR. SEHAM
MR. WISEHART

United States District Court Defendant's Exhibit D.

Crew Complement Agreement, Initialed by All Parties, December 1, 1962.

Memorandum of Agreement.

The parties, AMERICAN AIRLINES, INC., hereinafter referred to as "THE COMPANY", and the AIR LINE PILOTS in the service of American Airlines, Inc., as represented by the AIR LINE PILOTS ASSOCIATION INTERNATIONAL and the FLIGHT ENGINEERS in the service of the Company as represented by the AAL CHAPTER, FLIGHT ENGINEERS INTERNATIONAL ASSOCIATION, have reached the following agreements and understandings on the proper crew complement and qualifications for the safe, efficient and economical operation of the Company's aircraft,

NOW, THEREFORE, it is understood and agreed:

1. All cockpit stations on all aircraft shall be manned and operated by pilots in the employ of the Company on the American Airlines Pilots' System Seniority List.

2. All cockpit crew members hired subsequent to the date of this Memorandum of Agreement shall meet the Company's employment requirements for the hiring of pilots.

3. (a) "Pilots" as used in this Memorandum of Agreement shall mean those persons whose names appear on the Pilots' System Seniority List attached hereto as Appendix A* and cockpit crew members hired hereafter.

---

* Appendix A, the Pilots' System Seniority List, shall be divided into two parts—the Pilots' Seniority List and the Flight Officers' Seniority List—constructed as follows:

(a) The Pilots' Seniority List shall contain the names of all Pilots and Flight Engineers in the employ of the Company or on furlough as of July 1, 1962. The names of Pilots shall be first, listed in the same order as that in which they appear on the Pilots' System Seniority List of July 1, 1962 (attached). The names of Flight Engineers shall follow, listed in the same order as that in which they appear on the Flight Engineers' System Seniority List

(b) "Turbojet aircraft" as used in this Memorandum of Agreement shall mean turbojet aircraft required by government regulations to carry a minimum of three cockpit crew members.

(c) "Flight Officer" as used in this Memorandum of Agreement shall mean a Pilot serving as the third crew member on all aircraft operated with three or more cockpit crew members.

4. (a) The Company shall have the right to convert from four-man to three-man cockpit crews on turbojet aircraft. Such conversion may be made in accordance with the timetable specified in the Pilots' basic agreement.

(b) To the extent that the Company continues to operate turbojet aircraft with three Pilots and a Flight Engineer during the conversion process, the assignment of Second Officers on such aircraft shall be in accordance with the second officer Memorandum of Understanding dated January 21, 1959, but said Memorandum of Understanding shall not in any way restrict or limit the Company's right to operate turbojet aircraft with three cockpit crew members as provided herein. Said Memorandum of Understanding shall not be applicable to turbojet aircraft operated wth three-man cockpit crews and, upon completion of the conversion

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of July 1, 1962 (attached) but above any pilot hired by the Company after July 1, 1962.

(b) The Flight Officers' Seniority List shall contain the names of all Pilots and Flight Engineers in the employ of the Company or on furlough as of July 1, 1962. The names of Flight Engineers shall be first listed in the same order as that in which they appear on the Flight Engineers' System Seniority List of July 1, 1962 (attached). The names of Pilots, other than Flight Engineers shall follow, listed in the same order as that in which they appear in the Pilots' System Seniority List of July 1, 1962 (attached), but above any Pilot hired by the Company after July 1, 1962.

(c) The Pilots' System Seniority List shall contain each Pilot's initial hiring date as a Flight Crew Member. An asterisk shall be placed beside the name of each person whose name appears on the attached Flight Engineer Seniority List.

to such crews, said Memorandum of Understanding shall expire and be of no further force and effect.

5. Pilots whose names appear with an asterisk on Appendix A hereof shall have a reasonable period of time in which to acquire needed Flight Officer qualifications under appropriate training to be provided by the Company on Company time, but the Company shall not at any time be required to provide pilot training for such pilots attributable to a change in the qualifications for third crew members by any governmental agency. If a change in qualifications by any governmental agency causes or threatens to cause such Pilots or any of them to lose employment as third crew members, the consequences of such change in qualifications to such Pilots shall be equitably resolved in accordance with the procedures set forth in Section 12 of this Memorandum of Agreement including reference to the neutral referee if necessary.

6. Subject to the terms of the Pilots' basic agreement, a Pilot whose name appears with an asterisk on Appendix A hereof shall be assigned to duties as a Flight Officer on three-man turbojet cockpit crews when such Pilot becomes qualified to perform emergency relief necessary to assist the pilot then in command in the event of the incapacitation in flight of either the Captain or First Officer, which qualification shall be satisfied by fulfilling the following requirements:

(a) Possession of a commercial pilot's license and instrument rating and have completed to the satisfaction of the Company the qualifications required herein, or possession of any type of pilot certificate as referred to in Part 61, Federal Aviation Regulation dated November 1, 1962 and have logged a minimum of 1500 hours of flight crew time in scheduled air transport operation and have completed to the

satisfaction of the Company the qualifications required herein.

(b) Possession of a current flight engineer certificate with qualification on one or more of the aircraft types operated by the Company.

(c) Possession of a current FCC Restricted Radio/Telephone Permit.

(d) Attend and complete a Flight Officer training course designed and given by the Company including the following subjects:

(i) Pilot navigational duties, including radio navigation.

(ii) The use of en route charts and navigational facilities as well as approach plates and terminal facilities.

(iii) Radio communications equipment, aircraft communications requirements and procedures.

(iv) A flight simulator demonstration of Flight Officer functions in providing emergency relief necessary to assist the Pilot then in command, in the event of the incapacitation in flight of either the Captain or First Officer, by executing such en route, approach and landing co-pilot duties, including checklist functions, as would be performed by the second in command at the direction of the pilot then in command in the emergency situation specified above, other than manipulation of the primary flight controls.

(v) Theory of flight, jet aircraft.

(vi) Aircraft equipment and limitations; operation of jet aircraft systems; and location and function of all controls; and checklist requirements.

Crew Complement Agreement, Initialed by All Parties, December 1, 1962.

(vii) Cockpit familiarization at all Pilot stations and Flight Officer functions and responsibilities during flight and landing emergencies.

(viii) Systems monitoring and fuel management computation.

(ix) Center of gravity computations.

(x) Wind and runway computations.

(xi) Meteorological maps and charts and temperature and winds aloft data.

(xii) A Pilot whose name appears with an asterisk on Appendix A hereof who has not been qualified for flight crew duties as a member of a four-man turbojet crew shall, before being assigned as a member of a three-man turbojet crew, complete in addition to the qualifications and training required herein, a minimum of 25 hours of in flight orientation, familiarization, duties, and functions of the Flight Officer on turbojet aircraft. This requirement may be reduced one hour for each landing and takeoff of the aircraft to a minimum of 12.5 hours.

7. In the event the qualifications for Flight Officers are changed by the Company, the Pilots whose names appear with an asterisk on Appendix A hereof shall, by virtue of fulfillment of the requirements set forth above, be deemed to have the basic qualifications for the position of Flight Officer in the cockpit crew on the Company's turbojet aircraft, but said Pilots shall accept such additional training relating to the proper performance of the Flight Officer function as the Company may require on Company time, at Company expense.

8. Pilots whose names appear with an asterisk on Appendix A hereof shall be, and are hereby, guaranteed

the following rights, so long as they remain in the employ of the Company as Flight Officers:

(a) The prior right, over all other Pilots, to the third crew member position on all aircraft operated by the Company which government regulations require to be operated with three or more cockpit crew members, and for which a flight crew member who possesses a flight engineer certificate is qualified.

(b) The right to accrue seniority on the Pilots' System Seniority List. The exercise of such seniority shall be as provided in the Pilots' basic agreement.

(c) Protection against being furloughed or continued on furlough so long as any individual below them on the Flight Officers' Seniority List is serving as a Flight Officer on any aircraft operated by the Company which government regulations require to be operated with three or more flight crew members, and for which a flight crew member who possesses a flight engineer certificate is qualified for the third crew member position.

(d) An individual agreement in the form attached as Appendix B to the original, executed copy hereof shall be given to each Pilot whose name appears with an asterisk on Appendix A hereof.

9. The terms of this Memorandum of Agreement shall be for the benefit of and binding upon the parties, their successors or assigns, the persons named in Appendix A hereof, and all persons hereafter added to the Pilots' System Seniority List.

10. No party to this Memorandum of Agreement shall seek in any manner to remove, from the Federal Aviation Regulations, the requirement that a flight engineer certificate be possessed by one cockpit flight crew member in

turbojet aircraft, nor add to the Federal Aviation Regulations any requirement of a certificate which will jeopardize the job security of any Pilot whose name appears with an asterisk on Appendix A hereof and who remains in the active employ of the Company as a Flight Officer or retains recall rights.

11. The Pilots whose names appear with an asterisk on Appendix A hereof shall be consolidated into one unit with the other Pilots employed by the Company for the purpose of collective bargaining representation, and a majority of the Pilots whose names appear with an asterisk on Appendix A hereof have chosen the Air Line Pilots Association International as their exclusive collective bargaining representative. The AAL Chapter, Flight Engineers International Association hereby irrevocably relinquishes any right it may have to represent employees of the Company, and acknowledges that the Company is entitled to treat the Air Line Pilots Association International as the exclusive collective bargaining representative of any and all of the Pilots whose names appear with an asterisk on Appendix A hereof. The Pilots whose names appear with an asterisk on Appendix A hereof shall be covered by the Pilots' basic agreement.

12. Any dispute, claim or grievance arising out of or relating to the interpretation or application of this Memorandum of Agreement shall be resolved pursuant to Section 204 of the Railway Labor Act as follows:

(a) Any party to or persons bound by this Memorandum of Agreement may serve a written notice of protest within thirty days after the date of becoming aware of the action protested.

(b) The written protest shall be served on the Chairman of the American Airlines MEC of the Air Line Pilots Association, International, the Company's

Assistant Vice President—Labor Relations, and the designated Flight Engineer representative chosen by the Flight Officers on the American Airlines MEC at the time. Unless the three of them settle the matter to the satisfaction of the petitioner within fifteen days after receipt of the protest, the matter may be appealed, with a full statement of the facts and supporting data bearing on the dispute, to the Special Board of Adjustment hereinafter created for such purpose if such appeal is made within thirty days after the date on which the notice of protest is originally served.

(c) The Special Board of Adjustment shall consist of three members: The Chairman of the American Airlines MEC of the Air Line Pilots Association International, the Vice President—Flight of the Company, and the designated Flight Engineer representative chosen by the Flight Officers on the American Airlines MEC at the time. Any of the foregoing may designate an alternate to serve in his stead on the Special Board of Adjustment. A unanimous decision by the Special Board of Adjustment shall be final and binding on all parties.

(d) If the Special Board of Adjustment fails to render a unanimous decision within twenty days after receipt of the appeal, or a vacancy exists on said Board, the petitioner may cause the matter to be referred to as neutral referee by serving a notice thereof on each of the Board members and the neutral referee within thirty days after the appeal was received by the Board. The other members of the Special Board of Adjustment shall provide the neutral referee with information and assistance as required by him, but they shall not vote on the decision of the neutral referee. The absence of one or more of

such Board members other than the neutral referee, from part or all of the proceedings, shall in no way affect the validity or enforceability of the decision of the neutral referee. The neutral referee shall issue his decision within sixty days after the appeal was referred to him.

(e) The decision of the Special Board of Adjustment or the neutral referee, as the case may be, shall be in writing, signed, acknowledged and certified in like manner as a deed to be recorded, and shall constitute an arbitration award which is final and binding on the parties. The decision shall order any or all of the parties to take such steps as may be necessary to give effect thereto, and the parties shall comply fully with the terms of such order, but until such order is issued the Company shall be entitled to take such action as it may deem to be within its rights.

(f) The expenses of the proceedings, including the compensation of the neutral referee, shall be shared equally by the Air Line Pilots Association International and the Company, and the proceedings shall be conducted pursuant to procedures established by the neutral referee.

(g) If the neutral referee is unable to serve, the dispute shall be submitted to final and binding arbitration under the Voluntary Labor Arbitration Rules of the American Arbitration Association.

(h) The remedies prescribed in this Section 12 shall be exclusive and any claims not processed in accordance with the procedure herein provided shall be deemed to be waived.

13. This Memorandum of Agreement shall remain in effect so long as any Pilot whose name appears with an

asterisk on Appendix A hereof remains in the active employ of the Company as a flight crew member or retains recall rights. The parties hereto as well as the persons bound hereby irrevocably waive the right to serve any Section 6 notice under the Railway Labor Act of an intended change which, if adopted, would have the effect of modifying provisions contained in this Memorandum of Agreement, or otherwise to require bargaining as to such provisions, provided, however, that this Memorandum of Agreement may be changed by unanimous agreement among the Company, the Air Line Pilots Association International, and a majority of the Flight Officers' representatives on the American Airlines MEC.

14. The provisions of this Memorandum of Agreement shall prevail over inconsistent provisions in any agreement between the Company and the Air Line Pilots Association International. All agreements between the Company and the AAL Chapter, Flight Engineers International Association are hereby rescinded, and shall be of no further force and effect.

Crew Complement Agreement, Initialed by All Parties, December 1, 1962.

IN WITNESS WHEREOF, the parties have set forth their signature below this day of December, 1962:

FOR AMERICAN AIRLINES, INC.

.....

FOR THE AIR LINE PILOTS ASSOCIATION INTERNATIONAL and the Air Line Pilots in the Service of AMERICAN AIRLINES, INC.

.....

FOR THE FLIGHT ENGINEERS INTERNATIONAL ASSOCIATION, AAL CHAPTER, and Those Persons Whose Names Appear with an Asterisk on Appendix A hereof.

.....

December 3, 1962

[Appendix B will be comprised of a signed copy of the Memorandum of Agreement containing the following statement at the top of page 1:

This Agreement is with and for the benefit of and binding on *(Flight Officer's Name and Employee No.)*]

Portion of Affidavit of Counsel, March 13, 1963; Submitted in Connection with Motion for Reference to a Master.

(185) A dispositive issue involved in plaintiffs' motion for preliminary injunction, as well as the complaint herein, is whether a majority of defendant's flight deck employees desire the Joint Negotiating Committee to continue negotiating a settlement. Section 2 Fourth of the Railway Labor Act provides that "The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act." (45 U. S. C. A. §152 Fourth.) This right of majority determination is ". . . .a part of the (186b) contract of employment between the carrier and each employee, and shall be held binding upon the parties, regardless of any other express or implied agreements between them" (45 U. S. C. A. §152 Eighth).

4. Because no other means of making the determination sought herein is available to defendant an exceptional condition exists which requires the appointment of a master. On March 11, 1963, I was advised by Mr. Leverett Edwards, Chairman of the National Mediation Board, that said Board will not entertain a carrier petition for such a determination. Moreover, no petition has been filed with the Board by any of the employee groups involved herein. No previous request for the relief sought herein has been made.

Decision of the Civil Aeronautics Board in *FEIA, EAL v. Eastern Air Lines, Inc.*, C. A. B. , E-19923, August 19, 1963.

(Opposite ☞)

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 19th day of August, 1963

Complaint of	:	
	:	
FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, EAL CHAPTER	:	
	:	
vs.	:	Docket 14009
	:	
EASTERN AIR LINES, INC.	:	
	:	
Enforcement Proceeding	:	

ORDER DISMISSING COMPLAINT

This proceeding concerns a complaint of the Flight Engineers' International Association, EAL Chapter, AFL-CIO, (FEIA) that Eastern Air Lines, Inc., (Eastern) has violated section 401(k)(4) of the Federal Aviation Act of 1958, as amended, (the Act). That section of the Act provides that it shall be a condition upon the holding of a certificate of public convenience and necessity by any air carrier that it shall comply with title II of the Railway Labor Act.

The many documents filed and considered in this proceeding are listed in the appendix hereto. The matter is now before us for action on the motion of Eastern to dismiss the proceeding and various related pleadings. 1/

1/ The motion of Eastern to strike FEIA's answer filed February 20, 1963, is based on alleged late filing and upon failure to comport with the judicial standards of practice contemplated by the Board's Procedural Regulations. The timeliness argument is based on Eastern's contention that FEIA incorrectly assumed a postponement of the due date granted by the Chief Examiner's letter of February 11, 1963, at the request of the enforcement attorney to be applicable to their document also and that their filing based on that assumption was an unauthorized late filing.
(footnote continued)

In essence, the present controversy represents only a fragment of what has been a long and bitter jurisdictional dispute between Air Line Pilots Association (ALPA) and FEIA, which has involved all the major airlines, in reference to representation of flight engineers in jet aircraft. 2/ ALPA has taken the position that three pilots (albeit one of them qualified as a flight engineer) must be included in the flight deck crew of jet aircraft. FEIA, on the other hand, has contended that such crew must include a mechanic with an A. & E. or an A. & P. rating who should serve as the flight engineer. Prior to the present dispute, Eastern, in order to settle previous demands backed up by strikes or strike threats on the part of both ALPA and FEIA found itself obliged to agree to carry a flight deck crew of four on jet aircraft (including three pilots and one engineer with an A. & E. or an A. & P. license), in spite of the fact that FAA regulations required a crew of only two pilots and a flight engineer. The flight engineer requirement might be met either by a pilot qualifying as a flight engineer, or a mechanic with an A. & E. or A. & P. license who similarly qualifies. Eastern's agreement with FEIA was made in spite of the fact that Emergency Boards Nos. 120 and 121, which had been appointed pursuant to section 10 of the Railway Labor Act, had concluded that the third member of the crew should have basic qualifications as a pilot and that a mechanic's rating (the A. & E. or A. & P. license) was not required.

The letter did not restrict the postponement to the enforcement attorney's answer, and we do not agree with Eastern's position that FEIA's answer was filed late. However, we cannot countenance certain use of language in the answer. At page 29, FEIA states that "we shall not dignify this argument by any detailed contradiction of the many absolute falsehoods on which it is based." (Underscoring added). This is obviously an intemperate accusation in violation of Part 300.5 of the Rules of Conduct in Board Proceedings, which prohibits indulgence in offensive personalities, unseemly wrangling, or intemperate accusations or characterizations. Page 29 of FEIA's answer filed February 20, 1963, will therefore be stricken.

2/ For a more detailed description of the background of this controversy, see the opinion of Judge Feinberg in, Flight Engineers International Association, EAL Chapter v. Eastern Air Lines, 208 F.Supp. 182 (S.D.N.Y., 1962), and, Report to the President by the Commission to Inquire into a Controversy between Certain Air Lines and Certain of their Employees, May 24, 1961. (The Feinsinger Report).

The jurisdictional issue was injected into the instant labor negotiations of FEIA and Eastern as a result of the decision of the National Mediation Board in connection with United Air Lines, following a petition filed by ALPA, which determined that pilots and flight engineers constituted a single craft or class that should be represented by a single union. 3/ FEIA struck in protest, and in spite of an injunction obtained by Eastern, the union returned to work only after the appointment of the Feinsinger Commission by President Kennedy, which, after extensive hearings on the dispute, concluded that "neither peace nor safety on the airlines will be fully assured as long as there are two unions in the cockpit", 4/ and "that eventual representation of all flight deck crew personnel by a single union is inevitable. That end will come about in one of two ways--through a resumption of warfare between the two unions, or through a voluntary merger on fair and honorable terms." 5/ The present strike was commenced by FEIA on June 23, 1962 after compliance with the mediation procedures of the National Mediation Board, and after recommendations of Presidential Emergency Board No. 144 (the Kheel Board), which endorsed the recommendations of the Feinsinger Commission, had been rejected.

Prior to filing its complaint with the Board, FEIA brought two actions against Eastern and Eastern and ALPA respectively, in the United States District Court, Southern District of New York. 6/

3/ Application of Air Line Pilots Association, N.M.B. file No. C-2946, January 17, 1961.

4/ Feinsinger Commission Report, May 24, 1961, at 42.

5/ Feinsinger Commission Report, October 17, 1961, at 24.

6/ Flight Engineers International Association, EAL Chapter v. Eastern Air Lines, 208 F.Supp. 182 (S.D.N.Y., 1962) (Judge Feinberg's Opinion), affd. per curium, 307 F.2d 510 (C.A. 2, 1962), cert. denied, 372 U.S. 945 (1963); Flight Engineers International Association, EAL Chapter v. Eastern Air Lines and the Air Line Pilots Association, F.Supp. , 8 C.C.H. Aviation Cases 17,149 (S.D.N.Y., 1962) (Judge Levet's Opinion), affd. on other grounds, 311 F.2d 745 (C.A. 2, 1963), cert. denied, 373 U.S. 924 (1963).

Motions for preliminary injunctions were denied in both cases. The decisions were affirmed by the Court of Appeals, Second Circuit, and certiorari has been denied by the Supreme Court in both instances. Most of the issues presented in the complaint filed with the Board were before the courts in those proceedings. 7/

In its motion to dismiss, Eastern urges, inter alia, (1) that the Board should not relitigate matters that have been previously determined adversely to FEIA by the courts, (2) that because of FEIA's past conduct the Board should not grant relief on equity considerations, and (3) that dismissal would terminate a long drawn out labor dispute. Under section 1002(a) the Board may dismiss a complaint without a hearing whenever it is of the opinion that the complaint does not state facts which warrant investigation or action by the Board. 8/ The Board's rules pro-

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7/ The allegations in the Board complaint essentially raise 6 basic issues. Judge Feinberg's opinion determined two of these issues adversely to FEIA, i.e., (1) unilateral change in working conditions etc. without having first served a section 6 notice or exhausted the procedures of the Railway Labor Act, and (2) bargaining directly with individual flight engineers. The opinion determined certain aspects of a third issue (3) failure to bargain in good faith insofar as withdrawal of a previous offer is alleged. Judge Levet found as to the third issue that there was no failure to bargain in good faith by any insistence, by Eastern, on merger with ALPA as a condition to entering into an agreement, and he held that there was no merit to a fourth issue (4), entering into agreements with ALPA concerning engineers and an alleged unlawful conspiracy with ALPA to oust FEIA as bargaining agent. A fifth issue (5), failure to reinstate engineers when they had not been replaced in fact or in law (except to the extent the opinions held that securing replacements was lawful), was not before the courts. Nor was the sixth issue (6), failure to prosecute grievances as to alleged discharges before the system board of adjustment. Also certain aspects of the third issue (3), failure to bargain in good faith, insofar as it is alleged that Eastern had a fixed determination not to enter into any agreement, may not have been fully considered by the courts.

8/ It has been held that section 1002(a) vests in the Board "discretionary powers of investigation in respect to a filed complaint," Nebraska Department of Aeronautics v. Civil Aeronautics Board and Frontier Airlines, 298 F.2d 286 (C.A. 8, 1962). See also, Pan American-Grace Airways v. Civil Aeronautics Board, 178 F.2d 34 (C.A.D.C., 1949); Air Transport Association v. Civil Aeronautics Board (C.A.D.C., 10914) decided November 23, 1951 (not reported).

vide that a complaint shall be docketed for hearing, only if it shall appear that investigation is in the public interest. 9/ We find that in the circumstances surrounding the present labor controversy between FEIA and Eastern, investigation and action by the Board at this time would not be in the public interest, and is not warranted.

The decision of the Court of Appeals in the second case against Eastern and ALPA, on appeal from Judge Levet's decision, has particular significance in our consideration of whether a hearing on FEIA's complaint would be in the public interest. 10/ In that case, FEIA had sought an injunction requiring Eastern to bargain exclusively with FEIA with respect to terms of employment of flight engineers or so called "pilot engineers" (i.e., pilots hired to fill the position of flight engineers), and restraining Eastern and ALPA from bargaining as to those terms of employment and from giving effect to any agreements between them which concern those terms of employment. The court noted that the dispute represented one of rival claims as to the proper bargaining representative for the so called "pilot engineers", and held that the district court was without jurisdiction to grant the relief sought. Reliance was placed on the line of Supreme Court cases which hold that jurisdictional disputes as to the appropriate bargaining representatives have been left by Congress for exclusive determination by the National Mediation Board, or if the jurisdiction of the National Mediation Board was not invoked, such disputes should be settled by the normal processes of negotiation, mediation and conciliation. But in any event the decisions hold that it was the intention of Congress that the courts should not entertain questions of jurisdictional disputes. 11/

9/ Procedural Regulations Sec. 302.206 (14 C.F.R. 302.206).

10/ Flight Engineers International Association, EAL Chapter v. Eastern Air Lines and the Air Line Pilots Association, 311 F.2d 745 (C.A. 2, 1963), cert. denied, 373 U.S. 924 (1963).

11/ Switchmen's Union of North America v. National Mediation Board, 320 U.S. 297 (1943); General Committee v. Missouri-Kansas-Texas R.R., 320 U.S. 323 (1943); General Committee v. Southern Pacific Co., 320 U.S. 338 (1943). See also, Division 14, Order of R.R. Telegraphers v. Leighty, 298 F.2d 17 (C.A. 4, 1962); UNA Chapter, Flight Engineers Int'l. Assn. v. National Mediation Board, 294 F.2d 905 (C.A.D.C., 1961), cert. denied, 368 U.S. 956 (1962); Flight Engineers Int'l. Assn. v. Trans World Air Lines, Inc., 205 F.Supp. 137 (S.D.N.Y., 1962).

To a large extent we are faced with the same jurisdictional problem which confronted the Second Circuit, in that the history of the jurisdictional dispute between FEIA and ALPA over representation of Eastern's flight engineers or so called "pilot engineers" raises considerable doubt as to whether FEIA will continue as the certified bargaining agent for a single craft or class of flight engineers. Two Presidential emergency boards and the Feinsinger Commission have recommended that flight engineers should be qualified as pilots and that flight engineers and pilots should be represented by a single union. The decision of the National Mediation Board in the United case held that the pilots and flight engineers on that airline should constitute only a single craft or class. 12/ The Board finds, therefore, that it would be inappropriate to assume, in the light of this background, that FEIA will continue as the certified bargaining representative for Eastern's flight engineers and that there will be a continuing duty on the part of Eastern to bargain with FEIA as the appropriate bargaining agent for the engineers. If the Board were to hold a hearing on the complaint, a hearing that might last several years at great expense and inconvenience to all concerned, there is a substantial risk that prior to, or shortly after the completion of the hearings ALPA, rather than FEIA might be certified by the National Mediation Board as the bargaining agent for Eastern's pilots and pilot engineers or flight engineers. The Board cannot determine questions as to the appropriate bargaining representative or the appropriate craft or class for bargaining purposes, any more than can the courts. 13/ Under these circumstances, even if the Board were to find that

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12/ In a public statement dated February 21, 1961, the Chairman of the National Mediation Board advised that "the board's order in the United case is not necessarily binding on the rest of the airlines. Each case if sent to mediation will be judged on the basis of its facts . . ." However, the Board cannot ignore the substantial possibility of a similar determination being reached in the case of Eastern Air Lines were the Board to direct Eastern to bargain with FEIA by order entered in the present proceedings.

13/ See, Flight Engineers' International Association v. Western Air Lines, Inc., Docket 12223, Order No. E-17757, November 24, 1961, p.4, n.12; Air Line Pilots Association v. Southern Airways, Inc., Docket 11654, Order No. E-19162, January 3, 1963, p. 3.

Eastern had violated the Railway Labor Act, and accordingly was in violation of section 401(k)(4) of the Federal Aviation Act, the Board could not direct Eastern to commence good faith bargaining with FEIA, and any action on the Board's part would have to be confined to providing a remedy to individuals who have suffered as a result of past violations of the Act, as opposed to enforcement of a continuing duty of compliance.

Inasmuch as the Board could not take any effective action to require future bargaining by Eastern with FEIA, prior to a resolution of the jurisdictional controversy between ALPA and FEIA, to proceed with a hearing on the present complaint would not be in the public interest. 14/ The Board's function under 401(k)(4) of the Federal Aviation Act is to protect the public interest from continuing violations of the Railway Labor Act which might lead to disruption of air transportation arising from labor disputes. The public interest would not be served if the Board were to proceed with a hearing solely to provide a forum for the adjustment of private grievances, particularly where an adequate remedy is available in the courts, and where, as here, there has been resort to the courts to the extent previously indicated. 15/ We find, therefore, that the public interest would not be served by holding a hearing on FEIA's complaint prior to such time as the jurisdictional dispute between FEIA and ALPA is determined and it shall affirmatively appear that FEIA will continue as the certified bargaining representative for Eastern's flight engineers.

14/ We do not suggest that the Board will decline jurisdiction in every labor controversy where a claim is made that a certified union no longer represents the majority of the employees. Normally once a bargaining agent is certified by the National Mediation Board it is presumed certification continues until the National Mediation Board either de-certifies that union or certifies another union in its place. Oughton v. National Labor Relations Board, 118 F.2d 486, 498-99 (C.A. 3, 1941), cert. denied, 315 U.S. 797 (1942). However, the present jurisdictional dispute does not represent the normal situation, and the Board cannot ignore the determinations made in the instant labor controversy by the Presidential Boards and Commissions that have dealt with the question, nor the determination of the National Mediation Board in the United case.

15/ See, American Airlines v. North American Airlines, 351 U.S. 79 (1956).

There are additional reasons why proceeding with a Board hearing on FEIA's complaint would not be in the public interest. We refer to the various decisions by the courts which have determined most of the issues set forth in the complaint before the Board adversely to FEIA, and the continuing pendency of at least part of that litigation which will provide an adequate forum for determination of those issues in the complaint which have not previously been decided by the courts. It is recognized that prior court decisions, to which the Board was not a party, are not binding upon the Board in it's independent function to protect the public interest. 16/ Nevertheless, we conclude that under the facts and circumstances of this case the public interest would not be served by relitigation of those issues which have been determined by the courts, and by instituting proceedings which will parallel such continuing court litigation as may be

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16/ A.L.P.A. v. Southern Airways, Inc., Docket 11654, Order E-18560, July 5, 1962, p. 8 n.12; F.E.I.A. v. Western Air Lines, Inc., Docket 12223, Order E-17757, November 24, 1961, p. 3 n.7.

Under 401(k)(4) the Board has an interest separate and distinct from the parties to insure compliance with the Railway Labor Act as necessary for the interest of the public. National Licorice Co. v. NLRB, 309 U.S. 350 (1940). As such a determination in litigation between the complainant and the respondent in the courts, where the Board was not a party, cannot be and is not binding on the Board. See, Slocum v. Delaware L. & W. R. Co., 339 U.S. 239, 244 (1950); Curtis Publishing Co. v. F.T.C., 270 Fed. 881 (C.A. 3, 1921), affd. on other grounds, 260 U.S. 568 (1923); Westgate-Sun Harbor Co. v. Watson, 206 F.2d 458, 460 (C.A.D.C., 1953); New York State Labor Relations Board v. Holland Laundry, 294 N.Y. 480, 63 N.E.2d 68 (C.A.N.Y., 1945), reh. denied, 295 N.Y. 568, 64 N.E.2d 278. The N.L.R.B. and the I.C.C. have similarly held that they are not bound by prior court decisions in Matter of South Atlantic Steamship Co., 12 N.L.R.B. 1367 (1939); Matter of M. & M. Woodworking Co., 6 N.L.R.B. 372 (1938); Matter of Williams Mfg. Co., 6 N.L.R.B. 135 (1938); Chicago S.S. and S.B.R.R., 234 I.C.C. 34 (1939); Division 215 of Amalgamated Assn. v. Chicago A. & E. R.R., 234 I.C.C. 301 (1939). The Supreme Court has held that where the courts and a Federal Administrative Agency have concurrent jurisdiction to enforce a Federal statute there is no reason why proceedings in the two forums should not proceed simultaneously. Federal Trade Commission v. Cement Institute, 333 U.S. 683 (1948), reh. denied, 334 U.S. 839 (1948).

pursued by FEIA. Those issues which have not been previously litigated in the courts, may be included in the court proceedings by amendment of the complaint upon a hearing for a permanent injunction. 17/

As noted, most of the issues of the Board complaint have been determined adversely to FEIA in the two court proceedings. Appeal has been taken and certiorari has been denied by the Supreme Court. Although the court determinations were made without a hearing, the material facts are for the most part documented or are not disputed. Many of the issues concern solely questions of law and the determination of the legal questions having been reviewed by the Court of Appeals, and left undisturbed by the Supreme Court, such determinations would be entitled to great weight in any Board consideration of the controversy. There appears to be no reason why the courts cannot provide adequate and complete relief to the complainant, and it does not appear that Board proceedings would be concluded with any greater dispatch than the continuing litigation in the courts. In light of the extensive nature of court litigation which has at this time finally determined so great a portion of the allegations set forth in the complaint, we conclude that investigation or action on the Board's part would be warranted only upon a showing of a peculiar requirement of the public interest for Board proceedings in this matter. The complaint and other documents filed with the Board fail to set forth any facts which would indicate that there is such a public interest requirement. We conclude, therefore, that considering the sum total of the nature and effect of the past and pending court litigation that a hearing on the complaint would not be in the public interest or in furtherance of the purposes of the Federal Aviation Act. 18/

17/ We do not suggest that an application to the courts for a temporary injunction will, standing alone, constitute an election of remedies which will bar subsequent proceedings before the Board under section 401(k)(4). We note that the injunctive remedy of the court provides a form of relief which it is beyond the power of the Board to grant.

18/ The situation here is radically different from that which existed in ALPA v. Southern Airways, Inc., supra, where we reached conclusions in our order that differed in some respects from a prior decision of a Federal District Court. There the complaint was filed with the Board, the petition for enforcement had been docketed, and the hearing notice issued before the court proceeding was instituted. The interim court decision was not

(footnote continued)

In view of all the foregoing, we find that the complaint does not state facts which warrant investigation or action by the Board at this time, and that a hearing on the complaint would not now be in the public interest. We further find that no useful purpose would be served by deferring action pending resolution of the jurisdictional dispute and final conclusion of the pending court litigation, and therefore we dismiss the complaint. 19/ However, our dismissal shall be without prejudice to renewal of the complaint if, in accordance with this opinion, circumstances should so warrant.

ACCORDINGLY, IT IS ORDERED THAT:

1. The motion filed March 1, 1963, by FEIA for leave to file a responsive pleading be and it is granted.

2. The motion to strike filed February 27, 1963, by Eastern be and it is granted insofar as it requests striking of page 29 of FEIA's answer filed February 20, 1963, and is otherwise denied.

3. The complaint filed by FEIA on September 10, 1962, be, and it is dismissed.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON

Secretary

(SEAL)

---

issued until after the Board hearing had been completed and the Examiner's Initial Decision had been served. Furthermore the Court decision was not final at the time of the Board's decision, inasmuch as the decision was subject to reversal on appeal.

19/ The Bureau of Enforcement has submitted the opinion of its Director that the allegations of the complaint contain reasonable grounds to believe that the provisions of 401(k)(4) of the Act have been and are being violated and that formal investigation is in the public interest. Significantly, however, the Bureau did not specify the grounds for its conclusions. In answer to Eastern's motion to dismiss, the Bureau recommends denial of the motion, but further recommends that the Board postpone further procedural steps in this matter, pending the conclusion of the litigation now before the courts.

Appendix

DOCUMENTS FILED

Party	Nature of Document	Date Filed
Flight Engineers	Complaint	Sept. 10, 1962
Eastern	Answer	Sept. 25, 1962
Flight Engineers	Reply to answer	Oct. 26, 1962
Eastern	Response to reply	Nov. 5, 1962
Bureau of Enforcement	Petition for enforcement	Jan. 22, 1963
Eastern	Motion to dismiss	Feb. 1, 1963
Flight Engineers	Answer to motion to dismiss	Feb. 20, 1963
Enforcement Attorney	Answer to motion to dismiss	Feb. 25, 1963
Eastern	Motion to strike answer of Flight Engineers filed Feb. 20, 1963	Feb. 27, 1963
Flight Engineers	(1) Motion for leave to file responsive pleading; (2) Responsive pleading to Enforcement Attorney's answer to motion to dismiss	March 1, 1963
Flight Engineers	Answer to Eastern's motion to strike filed Feb. 27, 1963	March 5, 1963
Enforcement Attorney	Answer to Eastern's motion to strike filed Feb. 27, 1963	March 6, 1963
Eastern	Answer to motion of Flight Engineers filed March 1, 1963	March 11, 1963

SUPREME COURT, U.S.

Supreme Court of the United States

October Term, 1964

Office-Supreme Court, U.S.
FILED
SEP 3 1964
JOHN F. DAVIS, CLERK

No. 454

NICHOLAS J. O'CONNELL, JR., individually and as Chairman of the Master Executive Council of the pilots in the service of AMERICAN AIRLINES, INC., and the Negotiating Committee of said pilots, consisting of RICHARD LYONS, ROBERT T. GUBA, JOSEPH GARVEY, PAUL ATKINS and NICHOLAS J. O'CONNELL, JR., ex officio,

Petitioners,

against

JOSEPH V. MANNING, as President of the AMERICAN AIRLINES CHAPTER, FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, AFL-CIO, and AMERICAN AIRLINES CHAPTER, FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, AFL-CIO, an unincorporated association,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MARTIN C. SEHAM, Esq.
Attorney for Petitioners
Nicholas J. O'Connell, Jr., et al.
205 West 34th Street
New York, New York 10001
212 LO 5-4424

Of Counsel
MARTIN C. SEHAM
NANCY HELM PLANT

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Flight Engineers Int'l Ass'n v. Eastern Airlines, 311 F. 2d 745 (2d Cir. 1963), *cert. denied,* 372 U. S. 945 (1963) 10, 11

Flight Engineers Int'l Ass'n v. National Mediation Board, 294 F. 2d 905 (D. C. Cir. 1961), *cert. denied,* 368 U. S. 956 (1962) 11

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Other Authorities:

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Supreme Court of the United States

October Term, 1964

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JOSEPH V. MANNING, as President of the AMERICAN AIRLINES CHAPTER, FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, AFL-CIO, and AMERICAN AIRLINES CHAPTER, FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, AFL-CIO, an unincorporated association,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Nicholas J. O'Connell, Jr., *et al.*, petition for a writ of certiorari to review a judgment in the above-entitled case by the United States Court of Appeals for the Second Circuit.

Opinions Below

The opinion of the Court of Appeals is reported as *Ruby v. American Airlines, Inc.*, 329 F. 2d 11 (2d Cir. 1964), and is set forth in the Joint Appendix at p. 1 to p. 41.* The opinion of the United States District Court for the Southern District of New York is reported in 221 F. Supp. 301 and is set forth in Volume III of Record at p. 1b to p. 55b.

Jurisdiction

The judgment of the Court of Appeals was entered on February 14, 1964. A petition for rehearing and for rehearing en banc was denied on April 10, 1964. The jurisdiction of this Court is invoked under 28 U. S. C. §1254(1).

Questions Presented

1. Does a Federal court have jurisdiction to enjoin a labor organization from activities, otherwise excluded from the court's jurisdiction by the Norris-LaGuardia Act, 29 U. S. C. §101 *et seq.*, solely on the grounds that such a remedy will give the plaintiff effective relief against a carrier which has violated the Railway Labor Act?

2. When a Federal court enters an injunction against a labor organization in order to effectuate a remedy against

* American Airlines was also a party to the action below, and it is bringing a separate and independent petition for review of matters concerning it. However, since many of the same materials are relevant to both petitions, a Joint Appendix is being filed in the interest of reducing costs to all parties.

a carrier under the Railway Labor Act, is the court released from the obligation to make the findings required by the Norris-LaGuardia Act, 29 U. S. C. §§107, 109, and the Federal Rules of Civil Procedure and from the other substantive and procedural requirements of the Norris-LaGuardia Act.

Statute Involved

The statute involved is the Norris-LaGuardia Act, 29 U. S. C. §§101-113, and particularly §§101, 102, 104, 105, 107, 108, 109 and 113, which sections are set out in the Joint Appendix pp. 70-76. In addition, the Federal Rules of Civil Procedure, Rules 52(a) and 65(d) are involved, and these Rules are set out in the Joint Appendix p. 84.

Statement of the Case

This case is another episode in the so-called "crew complement controversy" which has agitated the airline industry for the past several years. This controversy concerns questions of the number, type, duties and representation of men who comprise cockpit crews of commercial jet aircraft. This Court is not being asked to enter that dispute, but, rather, to pass upon certain questions which will have an important effect on the administration of the labor laws in general.

The opinions of both the District Court and the Court of Appeals are extensive. Although we would not agree with all the findings in those opinions, we do not take issue with those which are necessary to the disposition of this

Petition. We will, therefore sketch, as briefly as possible the facts as set out by the lower courts which provide the background for the instant petition.

The petitioners in this case are the representatives of the American pilot group. When negotiations by both the pilots and the flight engineers were beginning over a new contract in March, 1961, the pilots were part of the Air Line Pilots Association (ALPA), an organization representing virtually all the pilots employed by airlines in this country. In general, the position of the various parties was that the flight engineers, represented by the Flight Engineers' International Association (FEIA), sought the retention of a flight engineer as a member of the cockpit crew; ALPA insisted on a minimum of three pilots in cockpit crews; and American Airlines sought a reduction of the size of the cockpit crew from four to three.

The conflicting positions of ALPA, FEIA and American seemed irreconcilable until the "local" American pilot leadership made a proposal in July, 1962, which came to be referred to as the "O'Connell iffy". Under this proposal, the cockpit crew would be reduced from four to three; the position of the present staff of flight engineers would be secured; there would be a substantial reduction in hours; there would be single representation of the cockpit crew. This proposal promised to achieve the cardinal objectives of each of the groups. The Company was willing to consider this proposal because the cost of the improved working conditions and shorter hours were offset by the savings that would be made in avoiding pilot training for the present staff of flight engineers. (Such training would have been required to meet ALPA's demands.) After discussions involving all the parties, the proposal was found generally acceptable to the American pilot group, FEIA

and the Company. The American pilot proposal was substantially embodied in the so-called "crew complement agreement" which was initialed by the American pilots (petitioners), FEIA and American on December 1, 1962. This agreement was then deposited with the Chairman of the National Mediation Board, who had supervised the negotiations leading to its conclusion.

ALPA, the pilots' national organization, was the only dissatisfied organization. ALPA strenuously opposed the crew complement agreement as contrary to its policy, which it claimed required all three members of the cockpit crew to hold pilot licenses.* It was equally plain to the American pilots that they could not win their economic gains if they bowed to the demands being made by the ALPA International. Relations between the American pilot group and ALPA rapidly deteriorated over this issue and finally led to the expulsion of the American pilot leadership from ALPA and the establishment of an entirely separate pilots' union, the Allied Pilots Association. On November 13, 1963, after an election under the auspices of the National Mediation Board, Allied was certified as the exclusive bargaining representative of American's pilots.

During the weeks following the O'Connell proposal and while the proposal was being considered by the Company, the pilots also discussed it with FEIA's leadership.** As

* The licenses in question were the so-called "C&I" certificates which require only minimal pilot qualification, such as would be obtained for piloting a Piper Cub. A "C&I" would not qualify a crew man to pilot a jet, but it would enable ALPA to claim that the holder of the certificate was a "pilot" under its jurisdiction.

** O'Connell had discussed the proposal with the FEIA Chapter President in July, 1962, before even submitting it to the Company.

a result, a series of conferences were held by the pilots and FEIA for the purpose of effecting a merger of the two groups. "By the end of October, an agreement of merger had almost been completed * * *." [Rec. Vol. III, p. 18b.] As a result of these merger talks, on November 1, 1962, the pilots and flight engineers began collective bargaining with the Company through a joint committee composed of representatives of both the pilots and the flight engineers. By common consent, the chief spokesman for the combined committee was the leader of the pilot group, Capt. Nicholas J. O'Connell, Jr. It was under the auspices of this joint committee that the December 1, 1962 crew complement agreement was achieved. However, after that agreement there still remained certain unresolved issues, including the wage rate for flight engineers under the new contract.

Negotiations between the Company and its crew members continued under the auspices of the joint committee through the early weeks of January and February, 1963. The position and attitude taken by the pilots during the course of negotiations is best set out in the decisions of the District Court and the Court of Appeals:

> "Until a merger agreement between the two unions had been made, there necessarily was separate bargaining representation for pilots and for flight engineers. While the negotiating sessions were at times joint and while O'Connell at times acted as chief spokesman for the two committees, it was understood between them that the flight engineers would negotiate their own wages and that their separate representation had not been given up. This was an entirely natural arrangement, not only because at that stage the engineers did not want to put themselves entirely in the hands of the pilots, *but also because the pilots themselves hesitated to assume such a responsibility.*

"Thus as between pilots and engineers, there was no question but that the Chapter continued to be the representative of the engineers. *The pilots did not purport to act for the engineers.* As O'Connell testified: 'We considered ourselves the pilot committee'." (Record Vol. III, pp. 34b-35b.) (Emphasis added.)

* * *

"There is no doubt whatever that the Chapter is now, and at all relevant times has been, the 'true representative' under the Act of the 'craft or class' of flight engineer employees of American. It was so certified by NMB on May 25, 1955. There has since that time never been the slightest evidence from which the Company could conclude that the Chapter no longer represented such employees. *No one else now claims, or has ever claimed, to represent the flight engineers.*" (Record Vol. III, pp. 52b-53b.) (Emphasis added.)

* * *

"The majority cite not one word of evidence that O'Connell ever advanced any proposal affecting the engineers' salaries or working conditions save at their request or that he attempted to bind them to anything without their assent. Indeed my brothers concede, fn. 2, 'O'Connell did not purport to represent the flight engineers,' and Manning's own testimony, also cited, was 'that they (American) would only talk about our wages through Mr. O'Connell, *or through the Joint Committee*'" (Jt. App. p. 28). (Emphasis added.)

Despite substantial progress through the joint negotiations, the FEIA became increasingly restive as they saw the split between the American pilots and ALPA widen with no certain outcome. Negotiations between the FEIA, the pilots and the Company finally foundered on the FEIA's contention that the flight engineers could not be

bound to a contract under which they would be represented by a yet unidentified pilots' union. Despite the fact that the joint committee had, with FEIA's consent, negotiated on issues of particular concern to the flight engineers, the FEIA withdrew from the joint bargaining committee and insisted that the Company bargain with it alone as the representative of the flight engineers. This occurred after most of the terms of an agreement covering all cockpit crew personnel (including the basic crew complement agreement) had been agreed upon. The pilots and the Company continued negotiations on the few issues remaining and, on March 15, 1963, initialed an agreement. This agreement was never finally signed.

On March 1, 1963, ALPA initiated an action against American Airlines for an injunction to force American to deal with it as the exclusive representative of the pilots. On March 12, 1963, FEIA intervened in ALPA's action seeking injunctions requiring American to bargain with FEIA as the representative of the flight engineers; on April 4, 1963, the FEIA amended its intervening complaint to add an action for an injunction against the pilot group. Thus it was the FEIA's complaint that first brought the Petitioners into the litigation. On July 9, 1963, while the litigation was pending Allied signed a final collective bargaining agreement covering only pilots and not the flight engineer group.

On August 12, 1963, the District Court rendered a judgment severing the action brought by ALPA from the intervention by FEIA, dismissing ALPA's action,* and granting FEIA the preliminary injunctive relief it sought

* Affirmed 323 F. 2d 248, *cert. denied*, 84 S. Ct. 658 (1964).

against both American and the pilots. On February 14, 1964, the Court of Appeals for the Second Circuit affirmed the injunction for FEIA, and on April 10, 1964, denied a Petition for Rehearing *en banc*, Judge Friendly dissenting in both instances.

The grounds and substance for the injunction against the pilot group are set out in the last two sentences of the Court of Appeals' 22-page majority decision, stating:

> "Judge Wyatt was also justified in enjoining the pilot representatives from (1) bargaining with the Company concerning the rules, rates of pay and working conditions of the flight engineers, (2) making, publishing or implementing any agreement covering the rules, rates of pay or working conditions of the flight engineers or (3) interfering with, influencing or coercing the flight engineers with respect to their right freely to choose their bargaining representatives. The record and findings below support the reasonableness and necessity of these orders *for the complete and effective relief to which the flight engineers are entitled. Cf. Local 167* v. *United States*, 1933, 291 U. S. 293, 299; *Porter* v. *Warner Holding Co.*, 1946, 328 U. S. 395, 398" (Jt. App. p. 22). (Emphasis added.)

It is to the decision just cited and quoted that this Petition is directed.

POINT I

A Federal court may not assume jurisdiction to enjoin a labor organization in a labor dispute in order to give effect to a remedy against a third party.

This action involves a labor dispute.

The Norris-LaGuardia Act defines the term "labor dispute" at 29 U. S. C. §113(c):

> "The term 'labor dispute' includes *any controversy* concerning terms or conditions of employment, or *concerning the association or representation of persons* in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee."

The only possible controversy that could exist between two labor organizations such as the FEIA and Petitioners would be one "concerning the association or representation" of the persons in the cockpit crew assigned to various duties and functions. That controversy had at least tentatively been resolved on American by the crew complement agreement of December 1, 1963, in which both the pilots and flight engineers stated that there would be a single representative for cockpit crew members.

On Eastern Airlines the crew complement controversy, including the issue of representation, produced an unsuccessful strike of the FEIA against the carrier. At Eastern the Air Line Pilots Association maintained operations and cooperated with the carrier in replacing flight engineers with pilots. See *Flight Engineers Int'l Ass'n* v. *Eastern Airlines*, 311 F. 2d 745 (2d Cir.), *cert. denied*, 372 U. S. 945

(1963). The dispute generated much litigation and ultimately led to an election under the auspices of the National Mediation Board in which both ALPA and the FEIA sought certification as bargaining representative of the Flight Engineer group. ALPA was victorious in that election.

On United Airlines, the Air Line Pilots Association filed a request with the National Mediation Board for a new craft and class determination which would designate all cockpit crew members as constituting the appropriate bargaining unit. (See *Flight Engineers Int'l As'n* v. *National Mediation Board*, 294 F. 2d 905 (D. C. Cir. 1961), *cert. denied*, 368 U. S. 956 (1962).) The result of this move by ALPA was an election among the pilots and the flight engineers, conducted by the National Mediation Board, which resulted in the designation of ALPA as the bargaining representative for all cockpit crew members on that airline. N. M. B. Case No. R-3641; Certification June 4, 1964.

There has never been any dispute about the fact the Petitioners, whether considered as the original pilot leadership or as the Allied Pilots Association, constitute a labor organization entitled to the protection of the Norris-LaGuardia Act. *Division No. 14, O. R. T.* v. *Leighty*, 298 F. 2d 17 (4th Cir. 1962), *cert. denied*, 369 U. S. 885 (1962).

The acts enjoined are specifically removed from the Court's jurisdiction.

The Norris-LaGuardia Act, 29 U. S. C. §104, has denied the Federal courts of jurisdiction to enjoin a specific list of facts "involving or growing out of any labor dispute." These acts include:

"(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 3 of this Act;

* * *

"(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

"(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

"(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

"(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

"(i) *Advising, urging, or otherwise causing or inducing* without fraud or violence *the acts heretofore specified,* regardless of any such undertaking or promise as is described in section 3 of this Act."

It is precisely these acts which are covered by the District Court's order. It is not necessary to examine every detail of the injunction at this time; it is set out at length in the Joint Appendix hereto, pp. 51-52. It is sufficient to point out that the Petitioners are, among other things, enjoined "from, directly or indirectly, in any way, manner or form, or by any means whatsoever * * * *influencing* * * * *any* of the flight engineer employees * * * with respect to their free and untrammeled right of selecting or designating their representative * * *."

On its face, this order enjoins precisely those acts which are removed from the Court's jurisdiction. Moreover, it

enjoins precisely that type of group, *i.e.*, labor organizations which the Norris-LaGuardia Act was passed to protect. The Court's order is applicable to two of the three men in the confines of a cockpit of a jet flying some 600 miles per hour. Two of these men (the pilots) may not "indirectly" influence the third (the flight engineer) in his choice of representative. The pilots, for instance, may not be able to comment upon the wisdom of a flight engineer strike which grounds the airline; they may not be able to comment to flight engineers about an errant leadership which engages in picketing and other displays which may damage the Company and all employees. Such comments would presumably "indirectly influence" the flight engineers.

Industrial relations in the airline industry move with the same supersonic speeds as the technological advances in that industry. The crew complement issue only became acute with the introduction of jet aircraft. The next major advance in airline technology is only a few years in the future with the introduction of aircraft flying at two and three times the speed of sound. The effect upon the work requirements and assignments of the men manning those aircraft is impossible to predict. In the past, technological advance has meant the complete elimination of certain cockpit crew crafts such as the flight radio officer and the navigator. In the future, it may mean a drastic realignment and reassignment of jobs and duties and representation.

While this very litigation was pending, the FEIA intervened in the pilot National Mediation Board representation proceedings against the American pilots and in support of the position taken by the ALPA International.

FEIA's publications have been filled with scurrilous comments about Captain O'Connell.

It is plain that the application of the District Court's order is both unfair and impractical. It restricts rather than enhances the freedom of expression and freedom of choice of two groups of employees—the pilots *and* the flight engineers. The Norris-LaGuardia Act, and particularly Section 4, was designed to permit the widest range of comment and action by labor organizations and employees concerned with questions of representation. There is absolutely no basis in the statutory language or the legislative history for the order which was entered in this case.

The jurisdictional limitations of the Norris-LaGuardia Act cannot be ignored in order to aid a remedy against a third party.

The Court of Appeals majority opinion disposes of *all* the issues raised by the additional defendants, including the critical jurisdictional limitations of the Norris-LaGuardia Act, in one sentence [Jt. App. p. 22]. In that sentence, the majority cites two "comparable" cases in support of the injunction. One of these cases, *Porter* v. *Warner Holding Co.*, 328 U. S. 395 (1946), involved the application of the Emergency Price Control Act of 1942 and held that despite the absence of legislative authorization the court could order *restitution* of excessive charges where it has jurisdiction to *enjoin future excesses.*

The other "comparable" case cited in the majority opinion, *Local 167, Int'l Brotherhood of Teamsters* v. *United States*, 291 U. S. 293 (1934), involved an appeal in an anti-trust case from an injunction issued in 1927—some five years before the Norris-LaGuardia Act was even en-

acted. The defendants in this case included wholesalers and distributors of poultry as well as a union of "schochtim" or persons qualified to slaughter poultry in accordance with Jewish dietary laws. These same defendants had been convicted of criminal violations of the Sherman Antitrust Act in separate litigation. On the appeal in the injunction action, the defendants argued that the decree was too broad. The Supreme Court rejected the defendants' contention that the government was required to offer specific evidence "that coercion has been practiced or is threatened in respect of every detail or commodity" and held that the government was entitled to broad and effective relief. In the *Local 167* case, the Court nowhere considers the Norris-LaGuardia Act; the issues involved did not constitute a "labor dispute" but concerned an antitrust law violation; the defendants had been proved guilty of violating the applicable statute beyond a reasonable doubt.

The only rationale supporting an injunction against the additional defendants which we can discern from the majority's opinion in the instant case is that such an injunction would make the remedy against American Airlines more "effective". As we will discuss more fully in Point II, there is no finding that the additional defendants themselves were guilty of any wrong.

It is true that in some instances there has been an "accommodation" between purposes of the Norris-LaGuardia Act and those of the Railway Labor Act. These have involved situations where it has been necessary for the Court to protect the integrity of the processes and procedures of the Railway Labor Act itself, *e.g., Brotherhood of Railroad Trainmen* v. *Chicago River and Ind. R. Co.*, 353 U. S. 30 (1957), and where employers have been ordered to ful-

fill the positive mandates of the Act, *e.g., Virginian Railway Co.* v. *System Federation No. 40,* 300 U. S. 515 (1937). Neither of these situations exist with respect to the additional defendants in the instant case.

There has been no charge that the additional defendants acted in any way to disrupt or interfere with the normal processes of the agencies charged with the administration of the Act. It is true that a major part of the District Court's order is derived almost verbatim from the order of the District Court in the *Virginian Railway case, supra.* See *Virginian Ry. Co.* v. *System Federation No. 40, Rec. on Cert.,* pp. 282-83; but far from supporting the propriety of the instant order, this illustrates the confusion of the lower courts in evaluating the relative rights of the Petitioners (pilots), the FEIA and American Airlines. As illustrated by the *Virginian Railway* case, the scheme of the Railway Labor act is certainly to proscribe influence by the carrier on employees' choice of representative; it is equally certain that the Railway Labor Act guarantees the rights of every employee to join or influence his fellow employees to join or support any labor organization. See Railway Labor Act, §2 (Fourth), 45 U. S. C. §152 Fourth. There is no basis for contending that the organization representing pilots is charged by the Act with any obligation to the organization currently representing the flight engineers. To the contrary, every presumption of the Railway Labor Act and the Norris-LaGuardia Act is that the pilots shall have the widest latitude to compete with and vigorously protect their interests in matters concerning the representation of crew members and the assignment of job duties.

The requirements of the Norris-LaGuardia Act cannot be ignored by a Federal court simply to foster "effective" remedies. In *Sinclair Refining Co.* v. *Atkinson*, 370 U. S. 195 (1962), the Court held that the Federal policy embodied in Section 301 of the Taft-Hartley Act in favor of the maintenance and enforcement of labor contracts did not mean that an injunctive remedy could be given against a labor union to enforce such a contract. Similarly, this Court has held that the Norris-LaGuardia Act may not be disregarded by a court, even where the union's actions may constitute an interference with foreign commerce or with the "internal economy of a vessel registered under the flag of a friendly foreign power." *Marine Cooks & Stewards* v. *Panama S.S. Company Ltd.*, 362 U. S. 365 (1960). This Court has recognized that the Federal courts simply may not ignore the Congressional mandate wherever and whenever they may think it appropriate or, in their judicial discretion, the "best thing" for the country.

In *Order of Railroad Telegraphers* v. *Chicago and Northwestern Ry. Co.*, 362 U. S. 330 (1960), this Court broadly reviewed the applicability of the Norris-LaGuardia Act in a Railway Labor Act context. In that case, the Court of Appeals for the Seventh Circuit enjoined the union's actions because they represented "an attempt to usurp legitimate managerial prerogatives" and the carriers also argued that an injunction should be issued because the agencies of the state had approved the same conduct by the carrier which the union was trying to prevent. In holding that the lower court was without jurisdiction to enjoin the action of the union, this Court said (pp. 335-36):

"Section 13(c) of the [Norris-LaGuardia] Act defines a labor dispute as including, 'any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.' Unless the literal language of this definition is to be ignored, it squarely covers this controversy. Congress made the definition broad because it wanted it to be broad. There are few pieces of legislation where the congressional hearings, committee reports, and the language in the legislation itself more clearly point to the necessity for giving an Act a construction that will protect the congressional policy the Act adopted. Section 2 of this Act specifies the public policy to be taken into consideration in interpreting the Act's language and in determining the jurisdiction and authority of federal courts; it is one of freedom of association, organization, representation and negotiation on the part of workers. The hearings and committee reports reveal that Congress attempted to write its bill in unmistakable language because it believed previous measures looking toward the same policy against non-judicial intervention in labor disputes had been given unduly limited construction by the courts." (Footnotes omitted.)

We submit that the foregoing statement from the *Railroad Telegraphers* case and the other authorities cited set out the governing rule of decision for application of the Norris-LaGuardia Act. Even if the theory suggested in the Court of Appeals majority opinion were fully articulated, we do not believe that it would fall within the rare exceptions to the Norris-LaGuardia Act which have been

delineated by this Court. Such a theory would not comprehend any policy or equitable rule which would have even equivalent stature to those already rejected by this Court as proposed rationales for evading the Norris-LaGuardia Act.

Questions of jurisdiction are among the most important matters which this Court considers. *Local No. 438 Construction & General Laborers' Union* v. *Curry*, 371 U. S. 542 (1963). In a labor case the mere assertion of jurisdiction by a court may substantially and radically affect the relative positions of the parties to the controversy. The decision of the jurisdictional question by the courts below is marked by both vague uncertainty and error—both defects are bound to breed mischief in the Federal courts and in labor relations until the issue presented is entertained and decided by this Court. May a Federal court enter an injunction in a labor dispute against a labor organization solely because it is in aid of a remedy against an employer? The Court of Appeals has apparently answered this question affirmatively, and its decision cannot help but influence the conduct of administrative agencies, courts and litigants operating under both the National Labor Relations Act and the Railway Labor Act. If the Court of Appeals has decided this question incorrectly, the issue is of such importance that it will ultimately be resolved by this Court. We submit that much harm could be prevented if this matter were decided now.

POINT II.

A Federal court may not ignore the procedural and substantive requirements of the Norris-LaGuardia Act and the Federal Rules of Civil Procedure.

Wholly apart from the jurisdictional capacity of the Federal courts to enjoin certain types of acts involving labor disputes, there are procedural and substantive limitations governing the circumstances under which *any* injunctive relief can be granted in a labor dispute. The courts below made no pretense of observing these requirements. Again, the only barely discernible rationale for the courts' approach is that such requirements need not be observed where a court feels it necessary to give broad relief in order to remedy the acts of a *third* party. See *supra*. Such an argument carries no more weight in evading the procedural and substantive limitations of the Norris-LaGuardia Act and the Federal Rules of Civil Procedure than it does in evading the jurisdictional limitations.

Requirements for supporting findings

Both the Federal Rules of Civil Procedure and the Norris-LaGuardia Act require that an interlocutory injunction such as that imposed upon the pilots be based upon adequate findings of fact and conclusions of law. Federal Rules of Civil Procedure, Rules 52(a), 65(d); Norris-LaGuardia Act, 29 U. S. C. §§107, 109.

It is thus clear that the order of the District Court must be based upon some findings of wrongdoing by the pilots which would justify the granting of a preliminary injunction. The Norris-LaGuardia Act, 29 U. S. C. §107, makes

it plain that the requirement of findings of wrongdoing and the other prerequisites of injunctive relief is so crucial in a labor dispute that it assumes *jurisdictional* dimensions.

We have already quoted, *supra*, pp. 6-7, all of the material in both the District Court and the Court of Appeals which bears directly on the relations between the Petitioners and the flight engineers. We find no hint or suggestion of wrongdoing *by* the Petitioners in the courts' opinions—just the contrary, *supra*, p. 7.

Compliance with Rules 52(a) and 65(d) is mandatory. *Shannon* v. *Retail Clerks Int'l Ass'n*, 128 F. 2d 553, 555 (7th Cir. 1942).

The mere fact that a party has certain relations with another party which may be guilty of some wrongdoing is insufficient in the absence of further findings to enter an order against all parties joined to the action. *Hartford-Empire Co.* v. *United States*, 323 U. S. 386, 405 (1945).

The absence of any findings of wrongdoing by the pilots, makes it impossible for the Court to enter a decree which complies with the Federal Rules.

In *NLRB* v. *Express Publishing Co.*, 312 U. S. 426, 436 (1941), the NLRB had found that the respondent employer had in fact violated the applicable statute. However, in that case this Court found that the Board had gone too far in issuing a generalized cease and desist order which was couched in terms of the statute itself, rather than the specific conduct of the employer. In the instant case the District Court's order comprehends and enjoins a course of conduct equally as broad as that described by the Court in the *Express Publishing* case. In that case, unlike the instant case, the injunction was at least predicated on a finding of *some* wrongdoing by the party enjoined.

The Norris-LaGuardia Act, by specifically imposing standards for findings upon a court in a labor dispute case, which are jurisdictional in nature, indicates that in a labor case the court must adhere to an even higher level of specificity in its findings before it can proscribe otherwise permissible activities. This is illustrated in *Chicago, Rock Island & Pacific R.R. Co.* v. *Switchmen's Union*, 292 F. 2d 61 (2nd Cir. 1961), in which the Court stated:

> "That section [Norris-LaGuardia Act §4] uses the most emphatic words possible—'No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction' against a peaceful strike. To overcome that bar plaintiffs had the burden of showing, as a matter of law, that the broad command of §4 is subject to an exception when a Union has violated its duties under the Railway Labor Act and, as a matter of fact, that the defendant here had done that. *They were obliged to meet that burden, not simply to show they might be able to meet it;* until they met it, the court was without power to issue an injunction whether temporary or permanent." [Emphasis added.]

Since there were no findings of any wrongdoing by the pilots, it must follow, *a fortiori*, that there has been no finding of a *proven* violation of any particular duties under Railway Labor Act by the pilots. Thus the jurisdictional barriers of the Norris-LaGuardia Act clearly were not overcome by either the respondents or the courts below.

Other prerequisites to injunctive relief

We will not argue at any length concerning the failure of the court's order to comply with the normal prerequisites to the issuance of a preliminary injunction against the Petitioners. In a labor dispute some of these prerequisites, such as a finding of irreparable injury to the moving party and a finding of greater injury to the moving party from a denial of relief than to the respondent from the grant of relief, are of jurisdictional importance and are set out in the statute itself, 29 U. S. C. §107 (b) (c). Other prerequisites, such as the probability of the moving party's success on a final trial and considerations of public policy, lie to some extent within the discretion of the trial court. *Moore's Manual—Federal Practice and Procedure,* pp. 629-30. However, in this case it is not necessary for us to reweigh the evidence or urge this Court to substitute its judgment for the District Court's. The failure of the District Court's order to comply with the prerequisites just mentioned is subsumed by the absence of *any* findings of wrongdoing by the pilots, which we have already discussed at length. Clearly, in the absence of such findings, there could be no basis for a court's exercise of discretion in favor of the appellees with respect to irreparable injury, balance of convenience, public policy, probable success or any other prerequisite to the issuance of a preliminary injunction.

The respondents did not comply with §8 of the Norris-LaGuardia Act.

Section 8 of the Norris-LaGuardia Act, 29 U. S. C. A. §108, requires that complaining party, as a prerequisite to injunctive relief "to make every reasonable effort to settle such dispute." The purport of that section was explained by this Court in *Brotherhood of R.R. Trainmen* v. *Toledo, P&W R.R.*, 321 U. S. 50, 56, 64 S. Ct. 413, 417 (1944):

> "Broadly, the section imposes two conditions. If a complainant has failed (1) to comply with any obligation imposed by law or (2) to make every reasonable effort to settle the dispute, he is forbidden relief. The latter condition is broader than the former. One must not only discharge his legal obligations. He must also go beyond them and make all reasonable effort, at the least by the methods specified if they are available, though none may involve complying with any legal duty. Any other view would make the second condition wholly redundant. It clearly is not the section's purpose, therefore, by that condition, to require only what one is compelled by law to do."

The findings of the court below emphasize the fact that the only issue of substance raised by the flight engineers as justification for their abandonment of joint negotiations with the pilots was the absence of any clearly identified bargaining representative of the pilot group. (Record, Vol. III, p. 37b.) This justification is not, and for some time has not been, available to the FEIA. As early as April 24, 1963, an affidavit was submitted to the court showing that a representation petition of the Allied Pilots Association was supported by some 76% of the pilots (later increased to 84% and then 90%), and the

identity of the pilots' representative was clearly defined. When this affidavit was submitted to the District Court, Judge Wyatt gave the complaining parties an opportunity to reconsider their complaints and pending motions. Following ALPA's lead, the FEIA refused to suspend its complaint pending the outcome of the National Mediation Board proceedings, but instead insisted upon pressing forward with its suit against American's pilots.

Each succeeding step in the controversy between ALPA and American's pilots made still clearer the identity of the pilots' representative—the National Mediation Board's verification of 84% of the pilots' support for Allied, the Board's decision to go forward with the representation proceeding in the absence of any findings of undue influence by the company, the decision of the District Court below, the decision of the Court of Appeals in Docket No. 28417, Joint Appendix pp. 53-69. Yet, at no time did the FEIA seek to renew the negotiations with the pilots which *the FEIA itself* had ruptured. Instead, the FEIA sought to delay the National Mediation Board's representation proceedings which led to the actual certification of Allied.

With the single obstacle to joint negotiations cleared away, the party which abandoned those negotiations did not seek their resumption on the terms they were abandoned. Instead, the instant litigation was pressed. Under such circumstances, FEIA may not obtain the aid of a Federal court and a court of equity. *Rutland Ry. Corp.* v. *Brotherhood of Locomotive Engrs,* 307 F. 2d 21 (2d Cir. 1962), *cert. denied,* 372 U. S. 954.

Conclusion

It seems to us quite apparent that the order against the Petitioners herein was simply tacked on to the decision against American Airlines. In the District Court, there was absolutely no effort to justify the injunction against the Petitioners. In the Court of Appeals, the majority made only a passing reference to the injunction against the Petitioners and did not deal at all with the serious issues raised by enjoining a labor organization under these circumstances.

It may well be that the courts below viewed the case primarily in the context of relations between American Airlines and the FEIA. In that context, the courts may have wished to give the "wronged" party as broad and sweeping relief as was within the judicial power. However, motives of sympathy and good will are not sufficient excuse to limit the actions of an innocent party or ignore the important jurisdictional, substantive and procedural limitations upon judicial action in this type of case.

Courts are too often led into error when they are urged to grant relief for some such reason as 'it won't really hurt one party, but it will be of great help to the other.' When a court responds to such specious arguments, it is generally the public interest and litigants yet unknown who are 'really hurt'. In the instant case, there now stands a decision by one of the most respected courts of appeals in the Federal system which invites other courts and the Bar to follow a rule which suggests that injunctions may be granted in a labor dispute against a labor organization, notwithstanding the restrictions of the Norris-LaGuardia Act and

the Federal Rules, where a court in its discretion believes it necessary or helpful in aid of a remedy against an employer. Such a doctrine will have ramifications which go far beyond the respective rights of the parties in this litigation. Before such a novel doctrine is absorbed into the Federal judicial design, we think it necessary and appropriate that this Court review the question through this petition for certiorari.

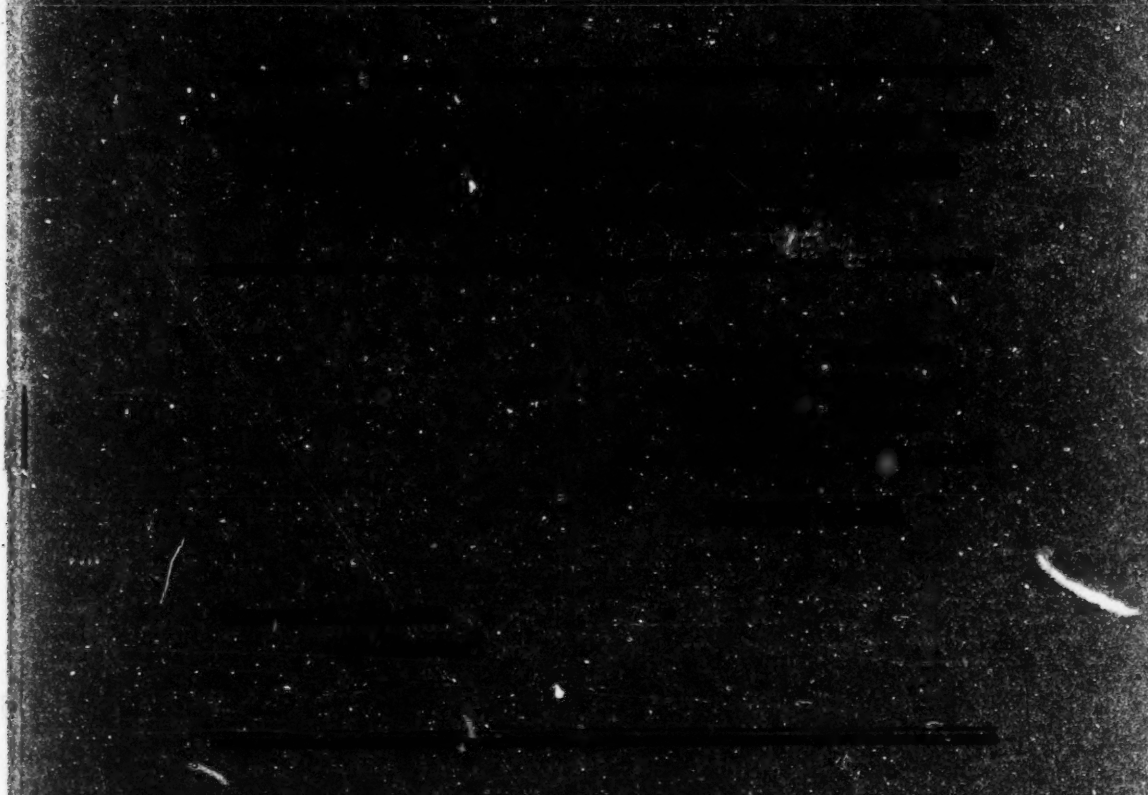
For the foregoing reasons, it is respectfully submitted that the petition for certiorari should be granted.

Respectfully submitted,

MARTIN C. SEHAM, Esq.
Attorney for Petitioners
Nicholas J. O'Connell, Jr., et al.
205 West 34th Street
New York, New York 10001

Of Counsel
MARTIN C. SEHAM
NANCY HELM PLANT

August 31, 1964



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IN THE

Supreme Court of the United States

October Term, 1964

No. .....

AMERICAN AIRLINES, INC.,

Petitioner,

v.

JOSEPH V. MANNING, as President of the American Airlines Chapter, Flight Engineers' International Association AFL-CIO, and AMERICAN AIRLINES CHAPTER, FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, AFL-CIO, an unincorporated association,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

American Airlines, Inc. petitions for a writ of certiorari to review a judgment in the above entitled case by the United States Court of Appeals for the Second Circuit. The judgment affirms a preliminary injunction based on a finding that the Company had refused to bargain with respondent flight engineer union.

Opinions Below

The opinion of the Court of Appeals is reported as *Ruby* v. *American Airlines, Inc.*, 329 F. 2d 11 (2 Cir. 1964), and is set forth in the Joint Appendix at pp. 1-41.* A related decision arising out of the same case, and containing pertinent background information, is reported as *Ruby* v. *American Airlines, Inc.*, 323 F. 2d 248 (2 Cir. 1963), certiorari denied, 376 U. S. 913. It is set forth in the Joint Appendix at pp. 53-69. The opinion of the United States District Court for the Southern District of New York is reported in 221 F. Supp. 301 (R. 1b-57b).**

Jurisdiction

The judgment of the Court of Appeals was entered on February 14, 1964 (Jt. App. 42-43). Rehearing was denied on April 10, 1964 (Jt. App. 44-45). On July 1, 1964, Mr. Justice Harlan extended the time for petitioning for certiorari until September 5, 1964 (Jt. App. 48). The jurisdiction of this Court is invoked under 28 U. S. C. §1254(1).

Questions Presented

1. ". . . whether the Railway Labor Act prohibits an employer who faces the demands of two employee groups that call for a joint solution from insisting that the negotiations be held simultaneously in one room and across one

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* Additional parties below also are filing a separate petition for certiorari. A Joint Appendix therefore has been prepared for use with both petitions.

** "R." citations herein all refer to Volumes II and III of the Record in the Court of Appeals. Pages in Volume II are cited with suffix "a", and pages in Volume III are cited with the suffix "b".

table, and requires him instead to negotiate across two tables in two separate rooms, running back and forth from one to the other."*

2. Does the National Mediation Board have exclusive or primary jurisdiction over the question of whether an employer has bargained properly, when the bargaining is being conducted under the Board's auspices?

3. Are the requirements of the Norris-LaGuardia Act applicable in an injunction suit by a union against an employer covered by the Railway Labor Act?

Statutes Involved

The statutes involved are the Railway Labor Act and the Norris-LaGuardia Act, and particularly 45 U. S. C. §§152 Ninth, 155, 181, 183 and 29 U. S. C. §§107 and 108 thereof, which are set forth in the Joint Appendix at pp. 70-83.

Statement of the Case

This case involves an injunction requiring bargaining by an employer in a labor dispute. However, as set forth more fully below, there was no absence of bargaining in the sense of *meetings* between the employer and the union; when the lawsuit began, meetings were not only being held, but were being held under the auspices of the Chairman of the National Mediation Board. Thus, the injunction was

* From the dissenting opinion in the instant case by Hon. Henry J. Friendly, U. S. C. J., 329 F. 2d at 23-24 (Jt. App. 25).

not based on any failure to meet, but on positions asserted in the meetings themselves.

Nor was the assertion of such positions the immediate cause of the litigation. Instead, the litigation was commenced because of a suit by another union, involving an internal schism within another group of employees, in which suit respondent union intervened.

The facts of the case arise out of the airline "crew complement dispute", a dispute which already has produced a dozen Presidential boards and commissions, almost as many strikes, and a great deal of high-level mediation.*

The crew complement dispute involves the manning of cockpit positions in large jet aircraft operated by U. S. air carriers. On petitioner American Airlines, Inc., cockpit positions on such aircraft are manned by pilots and flight engineers, represented by separate unions.**

In 1961, a special commission, popularly known as the Feinsinger Commission, was appointed by the President to investigate the crew complement dispute on American and six other airlines. Executive Order 10921 established the Commission ". . . to consider differences that have arisen regarding the performance of the flight engineer's

* The crew complement dispute is described in detail in JACOBS, DEAD HORSE AND THE FEATHERBIRD (Fund for the Republic: Center for the Study of Democratic Institutions, 1962).

** For convenience in terminology, the unions are referred to herein simply as the "pilot union" and the "flight engineer union". The flight engineer union is respondent in connection with this petition. The pilot union, an appellant below, is filing a separate petition for certiorari.

function, the job security of employees performing such function, and related representation rights of the unions . . . ."

On the matter of representation, the Feinsinger Commission concluded (i) that ". . . neither peace nor safety on the airlines will be fully assured as long as there are two unions in the cockpit", and (ii) that ". . . eventual representation of all flight deck crew personnel by a single union is inevitable".*

The particular negotiations in question were initiated at the request of the Secretary of Labor in 1962 and were conducted continuously under the personal auspices of the Chairman of the National Mediation Board (R. 14b). The purpose was to resolve the crew complement dispute with both unions.

Bargaining resulted in a proposal by the pilot union, in August 1962, which contemplated single representation of all cockpit employees by one union (R. 15b). Both pilots and flight engineers agreed to negotiate on that basis; consequently, joint negotiations with all three parties participating took place from November 1, 1962, until almost March 1, 1963 (R. 17b-19b).

In December 1962, however, an internal schism developed in the pilot union (R. 24b). The pilot schism was not resolved. It resulted in a lawsuit filed by the pilot union on March 1. The purpose of the suit was to stop the pilots' negotiating committee from participating further in the joint negotiations.

* Report of May 24, 1961, p. 22; Report of October 17, 1961, p. 12.

A week earlier, the flight engineer union had withdrawn from the joint negotiations to attend a membership meeting in Los Angeles (R. 38b). After the meeting, the pilot suit had been filed, and the flight engineers did not return to the joint negotiations. In the meantime, the Company and the flight engineer union exchanged opening notices as required under their current agreement (R. 39b).

Thereafter, the Company and the flight engineer union attended what were termed "bull sessions", called by Mr. Leverett Edwards, Chairman of the National Mediation Board, on March 6, 8, and 12, 1963, to discuss procedures for continued bargaining (R. 39b). The dates are important because it was on March 12, while the "bull sessions" were taking place, that the flight engineer union sued to intervene in the pilot litigation. As a result of the suit, for a time the only further meetings occurred in the courtroom.*

In the "bull sessions", the flight engineer union sought to start a new, separate series of negotiations. The Company argued that the flight engineers should return to the joint negotiations and, in fact, that they were obligated to do so by virtue of prior bargaining commitments, including certain initialed provisions which had been delivered to the mediator and "redded out" (R. 20b).** Although the courts below have said that the Company's position was not well founded, the Company contended that the dispute was within the exclusive jurisdiction of the National Media-

* There were 21 days in court, more than 3,600 pages of depositions and trial transcript, and hundreds of exhibits (Jt. App. 37-38).

** "Redding out" is a process used by the Chairman of the NMB to indicate the completion of bargaining on the items so treated.

tion Board and, on May 16, 1964, filed a petition with the Board, seeking a determination (R. 60b-70b). The petition remains pending.

Whatever the merits of the Company's earlier position, it voluntarily initiated separate bargaining with the flight engineer union in July 1963—more than a month *before* the decision of the District Court (R. 44b-45b). Resumption of bargaining was possible because (i) the Company and the pilots' new union entered into a working agreement covering pilots on July 9, 1963, and (ii) in connection with that agreement, the pilots relinquished demands which had previously affected the flight engineers.

The District Court's hearings were completed on May 3 but, when bargaining resumed in July, there had been no ruling on the motion for a preliminary injunction (R. 44b). American Airlines therefore submitted a suggestion of mootness based on the voluntary resumption of flight engineer bargaining (R. 44b-45b).

The District Court rejected the suggestion of mootness (R. 45b-48b). On August 12, 1963, it filed an opinion in favor of American Airlines with respect to the pilot part of the case but against the Company with respect to the flight engineers (R. 55b). A preliminary injunction was issued requiring flight engineer bargaining (R. 3a-5a). The two aspects of the case were severed by the District Court *sua sponte*, and appeals followed (R. 57b). The denial of an injunction in the pilot part of the case was affirmed.* The preliminary injunction in the flight engineer part of

* *Ruby* v. *American Airlines, Inc.*, 323 F. 2d 248 (2 Cir. 1963), certiorari denied, 376 U. S. 913 (Jt. App. 53-59).

the case was affirmed separately, by a different panel of Judges, and is the subject of this petition. The opinion of Judge Medina was concurred in by Chief Judge Lumbard. Judge Friendly dissented from both the decision on the merits and the denial of rehearing (Jt. App. 22, 44).

Reasons for Granting the Writ

The sections of the discussion below follow the same order as the corresponding questions presented above at pp. 2-3.

I

To the majority in the Court of Appeals, "the critical finding that lies at the heart of this appeal", is as follows (329 F. 2d at 13; Jt. App. 3):

> "From at least as early as January 31, 1963 to July 11, 1963, the Company refused to bargain collectively with the Chapter, and until at least as late as March 15, 1963 the Company instead bargained collectively in respect of flight engineers only with a committee, of which O'Connell was Chairman, and which the Company claimed represented the flight engineers."

In the eyes of the majority, the foregoing quotation from the District Court opinion ". . . is a finding of a pure, unadulterated fact . . . [which] cannot be disregarded or set aside unless clearly erroneous" (*ibid.*).

Judge Friendly emphatically disagreed: "Calling a judge's legal conclusion a finding of fact is an all too easy

way for appellate judges to obscure or even avoid legal issues when the result of the trial suits them"; under the National Labor Relations Act, "the ultimate conclusion that, on such facts and inferences therefrom, an employer or a union has refused to bargain in violation of its legal duty has been deemed open to full review" (329 F. 2d at 23; Jt. App. 24, 25). What the District Judge meant by the quoted statement, Judge Friendly said, "one cannot be sure": if he meant that "American had violated a legal duty by insisting on joint bargaining"—"his conclusion was wrong as a matter of law"; if he meant that American had done "something more"—"[the finding] would be 'clearly erroneous' as a matter of fact" (329 F. 2d at 26; Jt. App. 30).

The difficulty with viewing the District Court's statement as a "pure, unadulterated fact" is twofold:

A. In the first place, the statement is not in that part of the opinion in which the facts are set forth; it is found instead in the latter part of the opinion, three pages from the end, in the context of a discussion of the law (R. 53b). If intended to serve as a finding of fact, the requirement of Fed. R. Civ. P. 52(a)—that such findings are to be "separately stated" from the conclusions of law—plainly was not observed by the District Court:

> "In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; *and in granting or refusing interlocutory injunctions the court shall similarly set*

forth the findings of fact and conclusions of law which constitute the grounds of its actions." (Emphasis added.)

The effect of the District Court's failure to comply with the foregoing requirement was to cause a disagreement within the panel of judges in the Court of Appeals (329 F. 2d at 22-24, 26; Jt. App. 23-25, 30). The avoidance of speculation and lengthy debate on appeal as to whether the District Court used such a statement as a finding of fact or a conclusion of law is, of course, the precise reason for the requirement of Fed. R. Civ. P. 52(a).

B. The second difficulty in viewing the District Court's statement as a finding of "pure, unadulterated fact", virtually immune from appellate review, is that what was found objectionable was not the Company's refusal to *meet*, but the positions taken by the Company in the very act of meeting. Thus the statement is a qualitative judgment as to what was taking place, and a qualitative judgment of this kind presupposes the application of a legal standard. Here, the applicable legal standard is derived from the meaning of the words "treat with" as used in Section 2 Ninth of the Railway Labor Act (45 U. S. C. §152 Ninth). *Virginian Railway Co. v. System Federation No. 40*, 300 U. S. 515 at 547-548 (1937). When such a finding is "premised . . . on an erroneous interpretation of the standard to be applied", the "unless clearly erroneous" rule does not apply to bar appellate review. *United States* v. *Parke, Davis & Company*, 362 U. S. 29 at 44 (1960).

It is important to recall that the underlying purpose of the negotiations from the very beginning was to provide a solution to the crew complement problem and that all parties agreed, including the many Presidential boards and commissions called upon to investigate the matter, that single representation was the solution which the situation required. Thus, American was bargaining, and no doubt bargaining strenuously, to accomplish the safety-in-the-cockpit-through-one-union recommendation of the Feinsinger Commission. Moreover, the joint bargaining which American sought to preserve also accorded with the Commission's suggestion.*

It may be that in view of the pilot schism, the engineers could legitimately undertake to withdraw from their initialed commitments. But, if this is accepted as a legitimate exercise of bargaining power, or bargaining stratagem, it must be equally true that the Company had a comparable right to seek to preserve the benefits of the prior bargaining by suggesting or urging that negotiations continue through the joint committee and with the same objective of one union—one contract.

The situation here points up why courts should be slow to intrude in the bargaining process. If bargaining is to work, the parties must be free to take positions which, regardless of their merits or demerits months later to a court, might advance bargaining in the direction of an agreement.

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* "The Commission suggests that progress toward further improvement of relationships take the form of meaningful consultation and, if found to be practicable, *joint bargaining* concerning rates of pay, rules, and working conditions applicable to the third seat on three-man turbojet crews." Report of October 17, 1961, pp. 14-15; emphasis added.

By any objective test, American's position *had not* stifled bargaining: there were meetings, talks, proposals, counter-proposals, etc. Whatever the therapeutic value of face to face confrontation across a bargaining table, it was being brought into play—in joint meetings and separate "bull sessions"—and in the presence of the Chairman of the National Mediation Board. Progress *was* being made; sincere desire for agreement *was* evident; in short, collective bargaining was taking place. Had there been no litigation, caused by *another* dispute, ". . . probably the engineers and the Company could eventually have found a compromise" (R. 37b).

When qualitative evaluation of such situations is required, are District Courts to be the end of the judicial road? Is litigation of refusal to bargain charges to be denied the benefits of the unifying principle of appellate review? Are individual District Courts to perform without supervision a specialized role in evaluating bargaining under the Railway Labor Act comparable with that performed by the NLRB under the National Labor Relations Act? In the absence of a clear statement by Congress, we think not.

At issue is the proper functioning of appellate review in the federal courts—a matter over which the Supreme Court has prime responsibility. Moreover, assessment of the qualitative aspects of collective bargaining implicit in the District Court's decision is especially needed in this case because the result will affect bargaining procedures generally and the widespread practice of joint bargaining in particular. What Judge Friendly called "the important

legal issue here" transcends the confines of this particular case, and leads us to ask that certiorari be granted for its review (329 F. 2d at 23; Jt. App. 25).

II

Our second reason for seeking certiorari involves the functioning of the National Mediation Board.

The National Mediation Board has broad statutory powers. The NMB is charged with the responsibility of determining bargaining representatives for employees (45 U. S. C. §152 Ninth). It also mediates "major" disputes arising under the Railway Labor Act (45 U. S. C. §§155 First (a), 183(a)). In addition, it has jurisdiction over "any other dispute not referable to an adjustment board as hereinafter provided, and not adjusted in conferences between the parties, *or where conferences are refused*" (45 U. S. C. §183(b); emphasis added).

The majority opinion below finds justification for the injunction in *Virginian Railway Co.* v. *System Federation No. 40,* 300 U. S. 515 (1937) (329 F. 2d at 21-22; Jt. App. 20-21). In *Virginian Railway,* however, the injunction *gave effect* to the work of the National Mediation Board; here, the injunction is at cross purposes with the Board's work.

Following *Virginian Railway,* the Supreme Court has never sustained an injunction working at cross purposes with those matters committed to the jurisdiction of the National Mediation Board: *General Committee* v. *M-K-T R.,* 320 U. S. 323 (1943); *General Committee* v. *Southern*

Pacific Co., 320 U. S. 338 (1943); *Brotherhood of Railway & Steamship Clerks* v. *United Transport Service Employees*, 320 U. S. 715 (1943); *Switchmen's Union* v. *National Mediation Board*, 320 U. S. 297 (1943).

The *M-K-T* case, *supra*, bars judicial intervention having even a *possibility* of working at cross purposes with the National Mediation Board. That case, as here, involved a suit by a union arising out of an alleged violation of the duty to bargain. The Court held that it had no jurisdiction, saying "The concept of mediation is the antithesis of justiciability" (320 U. S. at 337).*

The facts of this case demonstrate the wisdom of the foregoing statement: until the flight engineer union sued to intervene, bargaining was progressing under the auspices of the Chairman of the National Mediation Board; in the heat of litigation, bargaining soon withered.

Judge Friendly's dissent points out that the majority decision ". . . makes the federal courts a second ring for airline and railroad bargaining disputes in contravention of the statutory plan" (329 F. 2d at 22; Jt. App. 22). The obvious effect will be to attract a flood of litigation concern-

* Nor do the cases cited in the Court of Appeals' opinion vary this rule (329 F. 2d at 20-22; Jt. App. 18-21). None of them even involve the National Mediation Board. To the extent that they refer to administrative procedures, the procedures are given effect, not undermined. The *Chicago River* case, 353 U. S. 30, concerns an injunction to give effect to the procedures of the Adjustment Board; the *Central Airlines* case, 372 U. S. 682, is an action to enforce an Adjustment Board award; the *Howard* case, 343 U. S. 768, concerns an injunction to prohibit racial discrimination; and in *Brotherhood of Railroad Trainmen* v. *Toledo, P. & W. R.*, 321 U. S. 50 (1944), an injunction was *denied* for failure to comply with the Norris-LaGuardia Act's "best efforts" requirement.

ing Railway Labor Act bargaining problems. Whether Congress intended the federal courts to become a handmaiden to the bargaining table, at cross purposes with the work of the National Mediation Board, is a question which deserves review by this Court. As Judge Friendly said (329 F. 2d at 30; Jt. App. 37-38):

> "Courts are ill equipped to assist in solving controversies like this; I cannot help thinking that the diversion of the energies of the parties incident to compiling this enormous record, with 21 days of depositions or hearings, more than 3600 pages of depositions and trial transcript and hundreds of exhibits, in which every nuance of the negotiations was explored in tiresome detail, and the attending exacerbations, have postponed rather than expedited a solution of the engineers' problems—not to speak of the drain on the time of an over-burdened district court."

III

Our third reason for seeking certiorari has to do with a question of first impression involving the Norris-LaGuardia Act.

This Court has held that conflicts between the Norris-LaGuardia Act and the Railway Labor Act are to be "accommodated" in "minor" disputes. See *Brotherhood of Railroad Trainmen* v. *Chicago River & Indiana R. Co.*, 353 U. S. 30 at 40 (1957). But the case at bar is what has been held to be a "major" dispute and, in "major" disputes, it is clear that the requirements of the Norris-LaGuardia Act apply—at least in suits against unions. *Order of Railroad Telegraphers* v. *Chicago & North Western R. Co.*, 362 U. S.

330 (1960). Does the Norris-LaGuardia Act embody a double standard in suits against employers? The legislative history does not support such a view. The Report of the Senate Committee on the Judiciary on the Norris-LaGuardia Act (S. Rep. No. 163, 72d Cong., 1st Sess. (1932), p. 19), states:

> "The same rule throughout the bill, wherever it is applicable, applies both to employers and employees, and also to organizations of employers and employees."

See also Note, 77 Harv. L. Rev. 1150 at 1151 (April, 1964).

Moreover, as the dissent points out, the requirement of "accommodation" is applicable only in case of conflict in the statutory provisions; here, there is no conflict (329 F. 2d at 31; Jt. App. 40): Section 8 of the Norris-LaGuardia Act requires proof of "every reasonable effort" to resolve the dispute (29 U. S. C. §108); Section 2 First of the Railway Labor Act likewise contains an "every reasonable effort" requirement (45 U. S. C. §152 First). As to this requirement, Judge Friendly said, "I cannot see how it could be found that when the [flight engineer union] sought an injunction, it had made 'every reasonable effort to settle' the dispute as to the handling of its opener of February 28, 1963, 'either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration' " (329 F. 2d at 31; Jt. App. 40).

Nor is the Railway Labor Act in any way inconsistent with the mandate in Section 7 of the Norris-LaGuardia Act —and the general principle of equity—that proof of irreparable injury is a jurisdictional requirement for the issuance of an injunction (29 U. S. C. §107). In this case,

American voluntarily signified its willingness to bargain separately with the flight engineer union over a month before the injunction was issued, and negotiations had resumed. Thus, there simply was no immediate and irreparable injury threatened at that time which an injunction was needed to prevent (329 F. 2d at 31; Jt. App. 40-41).

Judge Friendly stressed that judicial intervention in labor disputes is to be avoided, in the absence of "compelling need" (329 F. 2d at 32; Jt. App. 41). Here, there was no compelling need for judicial intervention, and the courts below should have followed the example which has been set by this Court in similar circumstances. *Brotherhood of Railroad Trainmen* v. *Chicago & Illinois R.*, 375 U. S. 18 (1963); *Publishers Association* v. *New York Mailers' Union*, 376 U. S. 775 (1964).

Conclusion

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Dated: New York, New York,
September 3, 1964.

Respectfully submitted,

ARTHUR M. WISEHART
Attorney for Petitioner
633 Third Avenue
New York, New York 10017

212 TN 7-1234

GEORGE A. SPATER
Of Counsel

SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
SEP 3 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1964

No. 454

NICHOLAS J. O'CONNELL, JR., individually and as Chairman of the Master Executive Council of the pilots in the service of AMERICAN AIRLINES, INC., and the Negotiating Committee of said pilots, consisting of RICHARD LYONS, ROBERT T. GUBA, JOSEPH GARVEY, PAUL ATKINS and NICHOLAS J. O'CONNELL, JR., ex officio,

Petitioners,

against

JOSEPH V. MANNING, as President of the AMERICAN AIRLINES CHAPTER, FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, AFL-CIO, and AMERICAN AIRLINES CHAPTER, FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, AFL-CIO, an unincorporated association,

Respondents.

No. 455

AMERICAN AIRLINES, INC.,

Petitioner,

against

JOSEPH V. MANNING, as President of the AMERICAN AIRLINES CHAPTER, FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, AFL-CIO, and AMERICAN AIRLINES CHAPTER, FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, AFL-CIO, an unincorporated association,

Respondents.

JOINT APPENDIX

MARTIN C. SEHAM, Esq.
Attorney for Petitioners
Nicholas J. O'Connell, Jr., et al.
205 West 34th Street
New York, New York 10001
212 LO 5-4424

ARTHUR M. WISEHART
Attorney for Petitioner
American Airlines, Inc.
633 Third Avenue
New York, New York 10017
212 TN 7-1234

American Airlines, Inc. and Nicholas J. O'Connell, Jr., *et al.*, have each filed separate petitions for certiorari to review a decision by the Court of Appeals for the Second Circuit. Although the grounds of these petitions are different and the interests of these two parties are independent, both petitions arise from the same action and, therefore, utilize many of the same materials. Consequently, in order to minimize the costs of printing to all the parties litigant, this Joint Appendix has been prepared for use by the Court in considering each of the petitions in question.

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Decision of the United States Court of Appeals
For the Second Circuit

No. 178—September Term, 1963.

(Argued October 22, 1963 Decided February 14, 1964.)

Docket No. 28473

[SAME TITLE]

Before:

LUMBARD, *Chief Judge*,
MEDINA and FRIENDLY, *Circuit Judges*.

Appeal from a judgment of the United States District Court for the Southern District of New York, Inzer B. Wyatt, *Judge*.

American Airlines, Inc. appeals from a judgment granting certain injunctive relief to the intervenors, Joseph V. Manning, as President of the American Airlines Chapter, Flight Engineers' International Association, *et al.*, restraining American Airlines, Inc. from collective bargaining concerning rules, rates of pay and working conditions of its Flight Engineers with any person, organization or group other than the Chapter. Opinion below not reported. Affirmed.

Decision of the United States Court of Appeals For the Second Circuit

ARTHUR M. WISEHART, New York, N. Y. (George A. Spater and H. Wayne Wile, New York, N. Y., on the brief), *for defendant-appellant.*

MARTIN C. SEHAM, New York, N. Y., *for additional defendants-appellants.*

ASHER W. SCHWARTZ, New York, N. Y. (Walter N. Kaufman and O'Donnell & Schwartz, New York, N. Y., on the brief), *for intervenors-appellees.*

MEDINA, *Circuit Judge*:

Over the years the principal airlines in the United States have sought a solution to a congeries of controversies arising out of what is generally described as "the crew complement issue." Several phases of this controversy came to a head in the present case tried by Judge Wyatt. In the interest of brevity we may describe the parties as ALPA, the nation-wide collective bargaining representative of the pilots, the Chapter, the collective bargaining representative of the flight engineers employed by American, and certain pilots of American who broke away from ALPA and finally formed a new organization, Allied Pilots Association. The action was commenced on March 1, 1963 by ALPA challenging the right of American to bargain with the new Allied Pilots Association. On March 12, 1963 the flight engineers intervened seeking declaratory relief, and, on March 21, 1963 they were permitted to amend their pleading so as to pray for the injunctive relief that is the subject matter of this appeal. The pilots are described in the title of the action as "Additional Defendants." The upshot was a decision by Judge Wyatt having a triple aspect: (1) a holding in substance that ALPA was out and that American was entitled to bargain and enter into a collective bargaining

agreement with Allied Pilots Association, already affirmed by this Court in *Ruby* v. *American Airlines, Inc.*, 2 Cir., 1963, 323 F. 2d 248; (2) a holding that American must continue its check-off of dues for the benefit of the flight engineers, affirmed by the opinion of my brother Friendly, writing for a unanimous court in an opinion filed herewith; and (3) a holding in effect requiring American to bargain with the Chapter with respect to rules, rates of pay and working conditions of the flight engineers, based upon a finding of persistent and long continued refusal to bargain, which is the subject matter of the bargaining appeal discussed in this opinion.

The lengthy opinion of Judge Wyatt, based upon a thorough mastery of the facts as disclosed in a voluminous record of thousands of pages of testimony, supplemented by numerous exhibits, has not been published. We affirm in all respects the judgment appealed from requiring American to bargain with the flight engineers and granting certain incidental relief to make the injunction effective.

We shall assume familiarity with the "crew complement issue" and other matters described in Judge Friendly's opinion in the *Ruby* case.

The critical finding that lies at the heart of this appeal is:

> "From at least as early as January 31, 1963 to July 11, 1963, the Company refused to bargain collectively with the Chapter, and until at least as late as March 15, 1963 the Company instead bargained collectively in respect of flight engineers only with a committee, of which O'Connell was Chairman, and which the Company claimed represented the flight engineers."

The principal difference between our views and those expressed in the dissent stems from the nature of this find-

ing. We say this is a finding of pure, unadulterated fact, and that it cannot be disregarded or set aside unless clearly erroneous. We also hold that the questions of law, to be discussed in due course, stand out like sore thumbs, as indicated in Judge Wyatt's excellent opinion. That American refused to bargain is matter of fact. That it was under a legal duty to bargain is matter of law.[1]

As the matters of fact and the matters of law are thus clearly separated, we do not understand how the finding just quoted can be considered to be such an intermingling of fact and law as to give this Court any so-called power of "full review." See *Romero* v. *Garcia & Diaz, Inc.*, 2 Cir. 1961, 286 F. 2d 347; *Castro* v. *Moore-McCormack Lines, Inc.*, 2 Cir., 1963, 325 F. 2d 72.

If the power of "full review," otherwise expressed as the power to "review freely," exists in such a case as this, despite the clear separation of fact and law, the inevitable result will be lengthy opinions in which dribs and drabs of testimonial evidence, and quotations of excerpts from exhibits, will be scrambled together with bits of law into an indiscriminate mass, all for the purpose of supporting a conclusion deemed to be economically or socially wise or to be otherwise desirable. And in this hodgepodge reference will be "freely" made to testimony that the trial judge has necessarily rejected as not credible and to statements in documents that he has necessarily found to be unreliable. If true findings are only separate statements of "eviden-

1. It is quite true, as held in some of the cases cited in the dissent, that we often deal with "findings" that are no more than legal conclusions, in which event the "finding" is "freely reviewable" on appeal, because it is impossible to separate the "law" from the "fact" in the finding. The principle involved is a simple one, although not always easy to apply. It is our function to review the law. It is not our function to review the facts, except when a finding of fact by the trial judge is clearly erroneous. True findings of fact on conflicting evidence are not to be disturbed by us even if we as individual judges would have made different findings had we presided over the trial.

tiary" particulars, rather than the traditional conclusory statements of fact based upon a distillation of the proofs and the making of essential inferences of fact, the result will be a most undesirable confusion. So, at the outset we state the rule to be, especially in this case where the testimonial evidence is conflicting and the trial judge saw and heard the witnesses as they gave their testimony, and a finding of fact by a District Judge in a non-jury case must stand if there is substantial evidence to support it; and it must be assumed that conflicting testimony was rejected and that documents or parts thereof depending on the veracity of the witnesses giving such conflicting testimony were found to be unreliable, even if the trial judge does not make an endless series of detailed statements to the effect that he does not credit the testimony or part of the testimony of each witness.

Accordingly, we shall now address ourselves to a chronological statement of the course of events supplemented by comments and discussion, all for the purpose of demonstrating that the finding quoted above is supported by substantial evidence. In the process we think it will clearly appear that the proofs overwhelmingly support the finding. Some of the law questions will be adverted to briefly as we go along, and the decisive legal principles upon which the injunction is based will be summarized at the end.

I

There Was Substantial Evidence to Support the Finding of a Persistent Refusal to Bargain Over a Period of Many Months

From May 25, 1955 the Flight Engineers' International Association (FEIA) had been certified by the National Mediation Board as the bargaining agent for the American flight engineers. While the existing contract effective

May 1, 1958 did not expire according to its terms until April 30, 1963, one of its provisions permitted Section 6 "openers" to be served as affecting wages "to be effective not earlier than May 1, 1961." Accordingly, as the flight engineers insisted upon wage increases at the earliest possible date, the Chapter (i.e., the flight engineers) and American each served Section 6 "openers" in February, 1961, as affecting wage demands, as provided in the contract. There were negotiations on the subject of these wage increases from time to time between the flight engineers' team and the American negotiators, but progress was at a snail's pace. On March 14, 1962 the Chapter asked the National Mediation Board for mediation. The Board urged arbitration, the Chapter refused, and on June 21, 1962 the Board terminated its services, leaving the parties after the lapse of 30 days thereafter free from the restrictions of the Railway Labor Act.

Labor Department officials brought the flight engineers and American negotiatiors together in Washington, D. C., for meetings during the week of July 9, 1962. As found by Judge Wyatt, "The engineers were primarily interested in discussing wages at once," but American representatives "explained privately to the Labor Department officials that the problem on American was not so much with the engineers as with the pilots, this because the American pilots were far more interested in reduction of hours and other benefits (which would be very expensive for the Company) than in crew complement." Indeed, in May, 1962 the American pilots had informed American "that they were not interested in having the Company spend its money to qualify flight engineers * * * they wanted a reduction of hours and other benefits instead."

This in turn led to a series of developments that carry us right up to the threshold of the critical dates mentioned in Judge Wyatt's principal finding quoted above.

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We are now in Washington, D. C., in July, 1962. Labor Department officials, Chairman Leverett Edwards of the National Mediation Board, the pilots and American negotiators worked steadily from July 16 until July 25, 1962. The flight engineers "played little part" in these meetings. The net result was a collision of policies between the American pilots, who wanted reduced hours, better retirement plan provisions and miscellaneous benefits and who were not interested in the crew complement issue, and Ruby who, as President of the national organization, desired a uniform policy to be applied equally to all the major airlines.

The scene now shifts from Washington, D. C., to Fort Worth, Texas, and the dates are July 31 to August 2, 1962. The American officials are there, also the American pilots and Chairman Edwards. The flight engineers were not there and the reason for this is that the pilots and the Company officials were seeking some way of solving the crew complement issue in a way satisfactory to ALPA. The upshot was a proposal by O'Connell, chairman of the Negotiating Committee for American pilots. This was called "O'Connell's iffy," and Judge Wyatt describes it as follows: "if the Company would grant them (the pilots) reduced hours and an improved retirement plan, they on their side would agree to a three man crew without insisting that the flight engineer have a 'C and I' (thus saving the Company expensive training), and would bring the engineers not only into such an agreement but also into a merger with ALPA." There would thus be only one union in the cockpit and the Company, and the pilots would be happy and the integrity of ALPA maintained unimpaired. We shall see what was the reaction of the flight engineers.

In principle, the O'Connell proposal looked good to the engineers, provided they were to do the negotiating with respect to the increases in wages to be given to them.

Everything went smoothly through September and October, 1962. On the basis that everything was tentative and conditional until the final agreement was made and assented to by all the parties, the Chapter agreed to the merger with ALPA, and agreed to give up its separate representation of the flight engineers *for the future,* so that after the merger wages for flight engineers would be negotiated by ALPA. But the flight engineers were wary. As soon as the negotiations got around to the subject of wages, the flight engineers pointed out that there were 1600 pilots and only 600 flight engineers, and they wanted something in the agreement prescribing "the minimum relationship between the two pay scales, so that there could be some standard for future negotiations." As this could not be agreed on, even tentatively, the matter was left with the understanding "that the Chapter negotiating committee would separately negotiate with American on engineer wages for the contract then to be made, and that the engineer wage thus negotiated would form the basis for the pay relationship with pilots to be inserted in the merger agreement."

The pilots and the flight engineers then met jointly with Company officials, beginning November 1, 1962. Both the pilots and the engineers submitted separate proposals to the Company. Everything looked rosy on December 1, 1962 when O'Connell for the pilots, Manning for the flight engineers and Whitacre for the Company initialed the tentative and conditional agreement.

Judge Wyatt found:

> "Nothing which was said or done in these joint negotiations justified the company in believing that the engineers had given up their representation rights to a 'joint committee' or otherwise. It was clear that the giving up would only occur *after* a complete and over-

all agreement had been reached by all parties, which unfortunately never came to pass." (Emphasis that of Judge Wyatt.)

Before long it was apparent that Ruby would not go along for ALPA. By January 11, 1963 the American pilots and ALPA had parted company. The natural result of this was that the Company resumed negotiations with O'Connell's pilots' committee on January 16, 1963 and the flight engineers' negotiating committee joined the negotiation group on January 17, 1963.

As we now approach "at least as early as January 31, 1963," the time when Judge Wyatt found American commenced its refusal to bargain with the Chapter, it is well to bear in mind that the Chapter had throughout all these interesting developments steadfastly maintained its right separately to represent and to bargain for the flight engineers. More than this, it was especially on the alert, at all stages of the various negotiations, to preserve this right intact. The unresolved issue of additional wages for the flight engineers had at all times been in the forefront of the minds of the Chapter negotiators and they frequently expressed themselves clearly on the subject in their meetings and conferences with Company officials and also in their meetings and conferences with the pilots.

On January 24, 1963 O'Connell handed the flight engineers some substitute pages to be inserted in the tentative and conditional agreement of December 1, 1962. Blanks were placed instead of ALPA in these pages. This led to a dispute and the substitute pages were later withdrawn.

The upshot was an exchange of letters that precipitated the controversy on this bargaining appeal. Whitacre wrote to Ruby on January 28, 1963, and sent a copy to Schwartz, counsel for the Chapter. After a reference to the joint

negotiations, the letter contained the statement, "Accordingly, the Company recognized a Joint Committee for the purpose of negotiating a single agreement covering all cockpit members." Schwartz became suspicious, and he replied on January 29, 1963, with the statement:

> "Until the American Chapter, FEIA, merges with the ALPA, or any other representative of the Pilots, we remain a representative of a separate bargaining unit under the Railway Labor Act. There has never been a misunderstanding in this connection, and we do not want your letter of January 28, 1963 to create one."

Whitacre made no response to this letter from Schwartz, and it was soon all too evident that Schwartz' fears were well founded. On January 31, 1963 negotiations reached the subject of pay and retirement provisions for the flight engineers. The parties had been bargaining on this subject off and on, and it is our view that throughout this period and before the second series of "reopeners" served reciprocally on February 28, 1963, and hereafter referred to, American was under a continuing duty to bargain with the flight engineers on the subject of wages. We do not understand there to be any distinction between "wages" and "retroactive wages" or "future wages."[2]

2. American had a duty to bargain and confer with the authorized representative of the flight engineers not only in regard to the subjects raised in the "openers" that had previously been exchanged, but also in regard to "all disputes" in which the flight engineers were "interested"—including, of course, the disputes relating to crew complement and possible merger of the flight engineer and pilot unions. 45 U. S. C., Section 152 Second. In exerting pressure on the flight engineers to negotiate through a Joint Committee headed by pilot O'Connell—as the dissent concedes was done—the Company was not only refusing to bargain but was violating Section 2 Third of the Railway Labor Act, 45 U. S. C., Section 152 Third, which provides

In any event, we have now arrived at the point where the testimony is in conflict and Judge Wyatt was called upon to decide questions of veracity and credibility, not on the basis of depositions, but with the witnesses in full view testifying before him in open court. And it may be well to mention the fact, in passing, that company memoranda are not sacrosanct, especially when they contain, as they do here, a variety of contradictions.

O'Connell testified that during the January 31, 1963 meeting, "Mr. Whitacre indicated the desire to deal with the joint committee when he was referred to the wages of the flight engineers," and that "Mr. Manning, I believe, expressed the desire of the flight engineers to speak for themselves in regard to their own wages." Coming immediately after Whitacre's failure to respond to the letter from Schwartz of January 29, 1963, I do not see how Judge Wyatt could do otherwise than infer that the reason for the failure to respond to the letter was that American ignored it because it would not negotiate flight engineer wages directly with the flight engineers, which is what this case is about. His finding is:

> "The Company took the position that on and after November 1 the pilots and engineers were *already* one and that the engineers for collective bargaining purposes were being represented by a 'Joint Negotiating

that "neither party shall *in any way* interfere with, *influence,* or coerce the other in its choice of representatives." (Emphasis supplied.) The stress put by the dissent upon Section 2 Ninth of the Railway Labor Act, 45 U. S. C., Section 152 Ninth, seems to be misplaced as the controversy with which we are here concerned was not, in the language of that paragraph, a dispute "among a carrier's employees as to who are the representatives of such employees." The Chapter was the certified bargaining representative of the flight engineers. O'Connell did not purport to represent the flight engineers. Manning did not purport to represent the pilots.

Committee', of which O'Connell was chairman or spokesman. Accordingly, the Company position on January 31 was that pay and retirement provisions for engineers were matters for negotiation with the 'Joint Negotiating Committee' and not with the engineers' committee separately; the Company declined to negotiate with the engineers' committee separately." (Emphasis that of Judge Wyatt.)

Manning testified that, not only in Whitacre's letter of January 28, 1963, but on many other occasions after that date, the Company "was very firm in their position that they were dealing with a Joint Committee and that the Chairman of the Joint Committee was Mr. O'Connell, of the pilots' committee, *and that they would only talk about our wages through Mr. O'Connell or through the Joint Committee.*" (Emphasis supplied.) The Company conducted itself in this fashion despite the fact that, according to Manning, throughout these talks "we told them we had never made any arrangement with Mr. O'Connell to speal for us. We told them we were speaking for the flight engineers and representing flight engineers on American Airlines and speaking for them in so far as flight engineer affairs were concerned." Manning also testified that the flight engineers never agreed to a Joint Committee and on the one occasion, on February 2, 1963, when they offered a proposal for flight engineer wages in the name of the Joint Committee, it was only because Mr. Schoonover, of the NMB, prevailed upon them to "follow the format of making a proposal in the name of the Joint Committee" because the flight engineers "were not getting anywhere with the Company in offering proposals as flight engineers."

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E. C. Petree, a member of the Chapter Negotiating Committee, testified that on February 12, 1963 before the pilot committee and flight engineer committee met with the Company, the flight engineers asked pilot representative O'Connell "if he would mind carrying on the conversation for us since it was apparent that he could talk with Mr. Whitacre and we could not." Petree then described details of the meeting which illustrated how it was impossible for him to talk directly with Whitacre and how his communications with Whitacre concerning flight engineer wages had to be passed on via pilot O'Connell—even though Petree and Whitacre were sitting at the very same table.

Manning testified to similar experiences with Whitacre on February 13 and 14, 1963, and also to the fact that although the flight engineers reasserted their rights as a separate bargaining representative, the Company "said we had given them up to this Joint Committee and the Joint Committee was now doing the negotiating for the flight engineers." "Later on," according to Manning, "the Company represented to us that the only way they would talk to us about the [1961] wage reopener was through this Joint Committee."

Whitacre himself testified that on February 26, 1963, he told the flight engineers in words or substance that the flight engineers had agreed to the Company's proposal through the Joint Committee with Mr. O'Connell as their spokesman and that flight engineer "retroactive pay will have to be settled through the Joint Committee * * *." The Company maintained this posture despite the fact that the flight engineers never relinquished their representational rights to any Joint Committee.

It is against the background reflected in this testimony and the other facts stated in this chronological summary

that American and the Chapter served new "reopeners" on February 28, 1963.

On March 6, 8 and 12, 1963, meetings between the Company and the flight engineers were held at the suggestion of Edwards. The Company, dubbing these meetings as "bull sessions," was careful to make clear that the talks were not bargaining sessions.

Petree testified that on March 8, 1963 "we attempted to talk wages, but Mr. Wisehart objected on our wage talks, and he claimed that this is not the Joint Committee, that he could not allow negotiations on that subject to proceed."

Manning also testified that "the Company took the position all the time that they would negotiate with us through the Joint Committee, and that was the only way they would negotiate with us * * *." There is cumulative testimony to the effect that on March 6, 1963 Whitacre told Edwards that he "wouldn't yield on this joint committee concept and that he was not interested in proceeding with the flight engineers as an independent bargaining agent."

In the midst of this extraordinary episode of the "bull sessions," and on March 7, 1963 the Chapter notified American that it would not bargain through any Joint Committee, that it had not abandoned or released its rights as sole bargaining agent for the flight engineers and that it was prepared to meet with the Company "immediately."

This was no precipitate action prompted by the commencement of this action on March 1, 1963 by Ruby and ALPA. It was the inevitable consequence of the attitude taken by American from the very date of Whitacre's letter of January 28 1963. This attitude had crystallized into an adamant position at the first "bull session" on March 6, 1963. Moreover, once ALPA's action was commenced the flight engineers had no option other than to seek to intervene in order to continue to assert and to protect their rights.

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To cap the climax, in the final arguments on August 6, 1963 there was the following colloquy between Judge Wyatt and Mr. Wisehart, counsel for American:

> The Court: Bull sessions, but you weren't bargaining with them, you wouldn't bargain with them.
>
> Mr. Wisehart: That's right, but they were discussing something which obviously had been a very recent development, namely, the decision of the engineers to apparently abandon their prior course of dealing.
>
> Now, I think in terms of the engineers' equities in this matter it is important to keep that time sequence in mind.
>
> The Court: I have it very much in mind.

In the meantime, as American must have realized that on this record Judge Wyatt had no alternative other than to find it had refused to bargain separately with the flight engineers on the subject of increases in the wages of the flight engineers and retroactive pay, American dispatched its belated and most significant letter of July 11, 1963, stating that American "is *now* prepared to resume bargaining with AAL Chapter FEIA." (Emphasis supplied.)

II

Comment and Discussion

Aside from the basic law governing the case, to be discussed hereafter, the record and the briefs disclose a number of miscellaneous law points relied upon by American that can be readily disposed of, as there is no merit in any of them.

American's principal contention before Judge Wyatt and in its briefs and argument in this Court was that by entering into the joint discussions in November, 1962 FEIA

abandoned and relinquished its rights as a separate bargaining agent for the flight engineers, and that it was accordingly estopped to claim otherwise thereafter. This is referred to in the dissent as an insupportable claim, and we agree. The Chapter had a legal right to be the sole bargaining agent for the flight engineers. This right they never surrendered. Indeed, they fought consistently and tenaciously to maintain this right.

There was no change in the legal status of the parties after the exchange of the second series of "reopeners" in February, 1963 or after the commencement of the action in March, 1963. Indeed, after March 1, 1963 American acted even more contemptuously toward the Chapter and its asserted right to be treated as the sole bargaining representative of the flight engineers.

Late in March, Stepard, the FEIA Secretary-Treasurer, phoned Lamond of American and left word that "the American Committee of Flight Engineers was ready to talk wages." Lamond paid no attention to this. Lamond's testimony that toward the end of the week of March 18 he authorized Chairman Edwards to tell Schwartz that he would meet with the engineers' committee as soon as his schedule of court engagements would permit is wholly discredited by the record as a whole and the inherent improbability that he made any such statement. Judge Wyatt was quite justified in disregarding it. The notion that Lamond, with American's staff of lawyers at his beck and call, was too busy taking or giving depositions and supervising "operations" to respond to Stepard's message was too far-fetched to be credited by Judge Wyatt. But there is more to come.

Instead of "talking wages" with the flight engineers, the Company felt so confident of the ultimate result that it even bargained separately *with the pilots* over the wages

to be paid to the flight engineers in the new set-up. This is evidenced by the March 15, 1963 "basic working agreement" (Intervenors' Exhibit 46), which, as Judge Wyatt said, "covered both pilots and engineers, as to compensation and everything else." Then the new Allied Pilots Association was formed and ALPA was finally and irrevocably out, unless the Supreme Court should reverse our holding in *Ruby* v. *American Airlines, Inc., supra,* 2 Cir., 1963, 323 F. 2d 248.

The sequel, as described by Judge Wyatt in his opinion, was:

> "Under date of March 28, Whitacre wrote to O'Connell confirming certain understandings as to the rates of pay and retirement benefits for engineers and adding that as to retroactive pay for engineers the Company 'stands ready to meet with the Joint Committee'; apparently neither this letter nor the March 15 agreements were given to any of the engineer representatives."

An agreement between the Company and the new Allied Pilots Association was duly executed. This new collective bargaining agreement made no reference to the understandings already had between the pilots and the Company "as to the rates of pay and retirement benefits for engineers," or "retroactive pay for engineers." Instead, the Company unctuously informs the flight engineers that their rights will in no way be jeopardized. And the crowning glory is the Company's final statement in its letter to Manning of July 11, 1963, after the Company had attained its principal objectives and though the flight engineers were at its mercy—the Company "is now prepared to resume bargaining" with the Chapter. In the meantime, after the ouster of ALPA, American twice urged Judge Wyatt to dismiss the claims of the flight engineers as moot.

The bargaining rights of the Chapter have been persistently infringed, and the Company even went so far as to maintain throughout that the Chapter had no such rights. American should not be permitted to get off unscathed, under these circumstances, by a pious offer to bargain after ALPA was out, after the basic working agreement had been negotiated and after the Company's maneuvers had been so fully exposed as to make it probable that the case was irretrievably lost.

III

The Law

The basic law controlling this case is simplicity itself. The Railway Labor Act, 45 U. S. C., Sections 151 *et seq.*, as amended, requires an employer to bargain collectively with the duly certified representative of its employees on the subjects of "rates of pay, rules, and working conditions." See 45 U. S. C., Section 152 First, Second, Fourth, and Ninth; *Virginian Ry. Co.* v. *System Federation No. 40*, 1937, 300 U. S. 515, 542-549; *Brotherhood of Railroad Trainmen* v. *Toledo, P. & W. R.*, 1944, 321 U. S. 50, 61; *International Association of Machinists* v. *Central Airlines, Inc.*, 1963, 372 U. S. 682, 690.

This naturally means bargaining with the collective bargaining representative and not bargaining with anyone else who does not represent those on whose behalf the certification has been made. Thus the Supreme Court in the *Virginian Railway* case, *supra*, 300 U. S. at page 548 held:

> "Both *the statute* and the decree are *aimed at* securing settlement of labor disputes by *inducing collective bargaining with the true representative of the employees and* by *preventing such bargaining with any who do*

not represent them. The obligation imposed on the employer by §2, Ninth, to treat with the true representative of the employees as designated by the Mediation Board, when read in the light of the declared purposes of the Act, and of the provisions of §2, Third and Fourth, giving to the employees the *right to* organize and *bargain collectively through the representative of their own selection, is exclusive. It imposes the affirmative duty to treat only with the true representative, and hence the negative duty to treat with no other.*" (Emphasis supplied.)

Nor can these principles be affected by the pendency of a lawsuit. The cry "they sued us" has a hollow ring. It was ALPA which commenced the lawsuit and intervention by the Chapter was a necessary step to protect the rights of the flight engineers. It would be strange indeed if an effort to protect one's rights should be construed as giving immunity to the aggressor. Besides, as the central, basic finding of Judge Wyatt demonstrates, there had been an adamant and persistent refusal to bargain in January, February, March, April, May and June of 1963. It is futile to try to cut this up into segments and treat it piecemeal. American was under a duty to bargain with the Chapter on the subject of the wages of the flight engineers prior to the service of the second series of "reopeners," and American did bargain on this subject, off and on, up to "at least as early as January 31, 1963," when American changed its position. American was also under a duty to bargain after the service of the second series of "reopeners," after the commencement of the lawsuit and thereafter during the entire period. It was a continuing course of conduct and must be treated as such. Indeed, this would be true even if the bargaining by American prior to

the service of the second series of "reopeners" had been voluntary and not under the compulsion of the law.

How the issuance of the type of injunction authorized by the *Virginian Railway* case, *supra,* 300 U. S. 515, could be held to be an abuse of discretion is beyond our understanding. There is nothing "debatable" or doubtful about the case made out by the Chapter.

If, after such a prolonged and persistent refusal to bargain, a great airline can thumb its nose to a comparatively small labor organization, and hide its flouting of the law behind a final surrender to the effect that "now" it is ready to bargain, at so late a date as July 11, 1963, the Railway Labor Act becomes a mockery and a dead letter. This is a power play from first to last.

It is clear, at least, that the Norris-La Guardia Act, 29 U. S. C., Sections 101 *et seq.,* as amended, does not bar absolutely the use of the injunctive power of the federal courts in labor disputes. See, e.g., *Brotherhood of Railroad Trainmen* v. *Chicago R. & I. R. Co.,* 1957, 353 U. S. 30; *Brotherhood of Railroad Trainmen* v. *Howard,* 1952, 343 U. S. 768; *Virginian Ry. Co.* v. *System Federation No. 40, supra,* 1937, 300 U. S. 515.

In order to determine whether the Norris-La Guardia Act prohibits a federal court from issuing an injunction in this particular case, we must be guided by the principle laid down in *Brotherhood of Railroad Trainmen* v. *Chicago R. & I. R. Co., supra,* 1957, 353 U. S. 30. In that case, while deciding that a federal court may enjoin a labor organization from resorting to a strike over matters pending before the Adjustment Board, the Supreme Court, at page 40, said:

> "We hold that the Norris-La Guardia Act cannot be read alone in matters dealing with railway labor disputes. There must be an accommodation of that

statute and the Railway Labor Act so that the obvious purpose in the enactment of each is preserved. We think that the purposes of these Acts are reconcilable."

See Note (1958) 72 Harv. L. Rev. 354, 354-357, 360-364, 371.

The purpose of the Norris-La Guardia Act is to restrain the federal courts from using their injunctive power especially against labor in the form of strike breaking, to influence the outcome of labor disputes and, in accord with the aims of both the Railway Labor Act and the National Labor Relations Act, the Act expresses the intent of the Congress that labor disputes be resolved through collective bargaining. See 29 U. S. C., Section 102 (declaration of underlying policy of the Act); *Brotherhood of Railroad Trainmen* v. *Toledo, P. & W. R. Co., supra,* 1944, 321 U. S. 50, 58-59; *Brotherhood of Railroad Trainmen* v. *Chicago R. & I. R. Co., supra,* 1957, 353 U. S. 30, 40-41; 75 Cong. Rec. 4505-4510, 4618-4626, 5462-5515 (1932); S. Rep. No. 163, 72d Cong., 1st Sess. 7-12 (1932); H. R. Rep. No. 669, 72d Cong., 1st Sess. 3 (1932).

Thus an injunction commanding an employer to bargain with the duly certified bargaining representative of its employees can hardly violate either the Norris-La Guardia Act or basic federal policy in the area of labor management relations. Where, as in this case, the refusal to bargain is long continued and persistent and is clearly established by the proofs, the courts should grant relief by way of injunction. *Virginian Ry. Co.* v. *System Federation No. 40, supra,* 1937, 300 U. S. 515; see *Brotherhood of Railroad Trainmen* v. *Toledo, P. & W. R., supra,* 1944, 321 U. S. 50, 61-62. In the context of this case, where the NMB, in the Spring of 1962, recognized that mediation of the wage dispute was unsuccessful and the District Court, supported by the preponderance of the evidence, found as a matter of

fact that the Company refused to bargain from at least as early as January 31, 1963 until July 11, 1963, the injunction of Judge Wyatt, limited in its objective, was clearly called for.

Judge Wyatt was also justified in enjoining the pilot representatives from (1) bargaining with the Company concerning the rules, rates of pay and working conditions of the flight engineers, (2) making, publishing or implementing any agreement covering the rules, rates of pay of working conditions of the flight engineers or (3) interfering with, influencing or coercing the flight engineers with respect to their right freely to choose their bargaining representatives. The record and findings below support the reasonableness and necessity of these orders for the complete and effective relief to which the flight engineers are entitled. Cf. *Local 167* v. *United States*, 1934, 291 U. S. 293, 299; *Porter* v. *Warner Holding Co.*, 1946, 328 U. S. 395, 398.

Affirmed.

FRIENDLY, *Circuit Judge* (dissenting):

If affirmance here merely perpetuated a useless but harmless injunction directing American Airlines to do what it already was doing voluntarily, a mere notation of dissent would suffice. I am impelled to do more because the course adopted by my brothers misconceives and avoids the responsibility of appellate review by wrongly baptizing as a finding of fact—largely immune from our scrutiny—conclusions of the trial judge which it is our duty to reexamine; and further because it makes the federal courts a second ring for airline and railroad bargaining disputes in contravention of the statutory plan, and flouts the command of the Norris-La Guardia Act.

(1) For convenience I quote again what the majority characterizes as "The critical finding that lies at the heart of this appeal":

> "From at least as early as January 31, 1963 to July 11, 1963, the Company refused to bargain collectively with the Chapter, and until at least as late as March 15, 1963 the Company instead bargained collectively in respect of flight engineers only with a committee, of which O'Connell was Chairman, and which the Company claimed represented the flight engineers."

My brother Medina certifies this to be "a finding of pure, unadulterated fact." To me the only part that would clearly qualify for this certificate is the recitation that during the period from January 31 to March 15 the Company bargained only with the committee of which O'Connell was chairman—a finding which is factually correct but legally inconclusive. Although one could debate whether the final clause, using the word "represented," is a finding of "pure" fact or a legal characterization or both, there is no need to do so; if "represented" means only that the engineers were to make themselves heard in meetings held jointly with the pilots, it is right but inconclusive, whereas if it means that the committee, acting as such, could bind the engineers, it is clearly erroneous. The much emphasized initial statement of a refusal to bargain collectively, a term having legal content and consequences, is no more a finding of "pure" fact than are findings of invention, *Great A. & P. Tea Co.* v. *Supermarket Equipment Corp.*, 340 U. S. 147, 153-54 (1950), of negligence or unseaworthiness, *Romero* v. *Garcia & Diaz, Inc.*, 286 F. 2d 347, 355 (2 Cir.), cert. denied, 365 U. S. 869 (1961), and cases there cited, particularly the discussion by Judge L. Hand in *Barbarino* v. *Stanhope S.S. Co.*, 151 F. 2d 553, 555 (1945); *Van Carpals*

v. *S.S. American Harvester*, 297 F. 2d 9 (2 Cir. 1961), cert. denied, 369 U. S. 865 (1962), or of reasonable diligence, *Dale* v. *Rosenfeld*, 229 F. 2d 855, 858 (1956). See also *Baumgartner* v. *United States*, 322 U. S. 665, 670-71 (1944); *Dalehite* v. *United States*, 346 U. S. 15, 24 fn. 8 (1953); *United States* v. *Parke, Davis & Co.*, 362 U. S. 29, 44 (1960); and *Lehmann* v. *Acheson*, 206 F. 2d 592, 594 (3 Cir. 1953).

A judge's conclusion that a party refused to bargain in violation of its duty is the result of two previous steps. One is his finding of the facts as to what happened; another is his formulation of a legal standard or, more exactly, his identification of the types of facts which must be found to permit the conclusion of a violation of duty. Thus one party may well have "refused to bargain" in the precise manner or at the precise time and place upon which the other insists. Whether or not such conduct would constitute an illegal refusal depends on the formulation of a standard defining the obligation to bargain and not merely on a factual finding that on a certain day he said, "I refuse to do thus and so." The Supreme Court has recognized this distinction in the review of orders under §§8(a)(5) and (b)(3) of the National Labor Relations Act; although the Labor Board's findings of evidentiary facts and the factual inferences drawn therefrom are "findings . . . with respect to questions of fact" which §§10(e) and (f) make conclusive "if supported by substantial evidence on the record considered as a whole," the ultimate conclusion that, on such facts and the inferences therefrom, an employer or a union has refused to bargain in violation of its legal duty has been deemed open to full review. *N. L. R. B.* v. *American Nat'l Ins. Co.*, 343 U. S. 395, 409-10 (1952); *N. L. R. B.* v. *Insurance Agents' Int'l Union*, 361 U. S. 477, 499-500 (1960). Yet the scope of review over action by a district judge under the "not clearly erroneous" rule is wider than

as to administrative orders. See *District of Columbia* v. *Pace*, 320 U. S. 698 (1944), and the discussion in Stern, Review of Findings of Administrators, Judges and Juries: a Comparative Analysis, 58 Harv. L. Rev. 70, 79-89 (1944).

Calling a judge's legal conclusion a finding of fact is an all too easy way for appellate judges to obscure or even avoid legal issues when the result of the trial suits them. The important legal issue here, which my brothers neglect, is whether the Railway Labor Act prohibits an employer who faces the demands of two employee groups that call for a joint solution from insisting that the negotiations be held simultaneously in one room and across one table, and requires him instead to negotiate across two tables in two separate rooms, running back and forth from one to the other. When we strip off the plethora of words generated in weeks of negotiation and months of litigation, that is what this case is all about.

I find nothing in the Railway Labor Act that requires a result so contrary to good sense.[1] Neither, apparently, did the National Mediation Board, whose representatives attended all the joint committee sessions without demur. And neither did the Chapter which had gone along with the joint committee procedure until the bringing of the *Ruby* action led to its record-making letter of March 7 and its joining the judicial fray.

1. My brothers cite the provision in §2 Third that "neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives." American did not do this. It agreed that the Chapter represented the engineers and should designate the spokesmen for them. What it did insist on was that the spokesmen should speak at meetings held jointly with the pilots, whose assent to the contemplated arrangement was essential. We have recently upheld an employer's lock-out of one craft of employees as a defensive measure against violation of a non-strike clause by another. *New York Mailers' Union* v. *NLRB*, —— F. 2d —— (2 Cir. 1964). Employer insistence upon joint bargaining with the two crafts for solution of a common problem would seem far more innocent.

It is just as plain that American could not lawfully consider the committee *as such* the bargaining agent, either for the pilots or for the engineers. It never sought to do so.[2] But if ever there was a problem warranting an employer in demanding joint bargaining with two employee groups, this was it. Everyone had recognized from the outset that what American could and would offer its flight engineers depended on whether it could persuade its pilots to withdraw their demand for three cockpit positions for themselves and to accept an engineer for the third. The Chapter had a vital interest in a negotiating framework that would afford the best chance to accomplish this. The first fruit of the joint negotiation, the Memorandum of Agreement of December 1, 1962, providing that the third seat in the cockpit should be filled by a "Flight Officer," with the engineers entitled to priority for that post, was an achievement for the Chapter as well as for American. Yet, as everyone knew, this plan could become effective only as part of a complete agreement on salaries and working conditions for both groups. There was nothing wrong in American's insisting that the negotiations for this should take place in the same room. Although, as Judge Wyatt found and the majority repeats, the two groups had agreed in October that each should negotiate its own initial salaries, an agreement from which neither deviated, they were concerned not only with the absolute amounts but with the relationship. Beyond this the pilots had a direct interest in many matters being discussed with the engi-

2. In contending the contrary my brothers make much of the point that in defending against the Chapter's attack, both in the District Court and here, American's counsel advanced, as one of several arguments, that the Chapter had ceded its rights to the committee. Though this claim was specious and its making was ill-advised, annoyance about it should not warp our judgment; one of the very reasons why the claim is specious is that it does not comport with what American did.

neers. They too might serve as "flight officers" subject to the engineers' seniority rights; all new hirings for the third cockpit position were to have pilot qualifications; the proposed merged union was to speak for the "flight officers" in future negotiations; and one of the topics for negotiation was whether the engineers were to come into the pilots' pension plan and, if so, on what terms. If the engineers wished, as they unquestionably did, to negotiate on a basis involving concessions by the pilots and integration in a single group with them, American was not required to bargain separately rather than together.

The relevant part of the story here begins with a completely harmonious joint negotiation in November, 1962, leading up to the December 1 Memorandum initialed by the three parties. This showed exactly how everyone intended matters to proceed. The final outcome was to be a single agreement covering all cockpit personnel, which would indeed be signed by a representative of the merged group, presumably O'Connell. But no such signing would occur until the Chapter had actually executed the Memorandum, along with ALPA and American, in the places provided to that end.

With this background it was by no means unnatural that O'Connell, the prospective future head of the merged group, should occasionally have been the mouthpiece for proposals for the engineers formulated by the Chapter. Sometimes the parties proceeded in one way, sometimes in another. Thus, on January 31 the Chapter itself submitted a modified wage proposal. Two days later, it submitted one beginning "The Joint Committee representing the cockpit crew members in the current negotiations to settle the crew complement issue on American Airlines make the following counterproposal based on the assumption that they are merging with the Pilots in an overall settlement of the crew

complement issue." When this was rejected, the Chapter submitted another proposal on February 6, beginning "The Flight Officers make the following proposal * * *." Since the Chapter's negotiators were unavoidably absent on February 11, this afforded an ideal opportunity for American to deal behind their backs if it had any thought of doing that. Instead American's contemporaneous notes recite that Schoonover, a representative of the NMB, "presented the Company with the Engineers' latest proposal * * *. Company registered objections to continued discussion with the Engineers absent and not due until Wed." "WBW [Whitacre] suggested we might be attempting too much. Perhaps we should just work an agreement with the pilots to drop the Second Officer and sign separately with the Engineers for what they can get. Lyons [a pilot] suggested that in Engineers' absence, we might work on open sections. WBW not agreeable. Prefers to call the Engineers in and button up the wage deal so the Company will have an idea of its costs * * * O'Connell agreed F/E's should come in. Schoonover called Schwartz to arrange, couldn't reach. Contacted Manning who agreed to have his committee in by 10 A.M. tomorrow." On February 12 O'Connell again spoke for the engineers; the full text of Petree's testimony as to this episode gives a quite different impression from the summary in the majority opinion. Whitacre testified that he had at least one session with the flight engineer committee alone, as the notes of February 5 show; that the Company made a flight engineer pay proposal to the full committee on February 13; that O'Connell then acted as the flight engineers' spokesman; and that the discussion was resumed in full committee on the following day.

The majority cite not one word of evidence that O'Connell ever advanced any proposal affecting the engineers'

salaries or working conditions save at their request or that he attempted to bind them to anything without their assent. Indeed my brothers concede, fn. 2, "O'Connell did not purport to represent the flight engineers," and Manning's own testimony, also cited, was "that they [American] would only talk about our wages through Mr. O'Connell *or through the Joint Committee.*" (Emphasis supplied.) When Whitacre told the engineers on February 26 that he considered they had agreed to a pay proposal through the Joint Committee, there is no reason to doubt the sincerity of his belief that they had.[3] Moreover, the very nature of the Joint Committee precluded its acting as such. It had no formal constitution and its composition varied from day to day. On February 5 only the engineers attended, on February 11 only the pilots. Usually more pilot than engineer representatives were present, but there is no suggestion that the Chapter could not have sent more—or that this would have had any consequences, one way or the other. After the split between ALPA and the American pilot group, American made no attempt to sign with what remained of the committee as representing the pilots; it awaited the formation of Allied and action by the NMB under §2 Ninth. It

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3. Whitacre also conceded that he had told the engineers that retroactive pay under their 1961 reopener would have to be settled through the joint committee. But it is plain that he was talking about retroactive pay as part of a general settlement and there was no reason to think that the pilot members would have played any part in the negotiation. Whitacre had told Schwartz, the Chapter's counsel, on February 1, "I have no intention of taking away your rights under the Railway Labor Act. If you want to negotiate wages separately we will talk but the benefits of the pilot agreement go out the window." This was uncontradicted and is thoroughly consistent with the entire record. A separate negotiation that would not place an engineer in the third cockpit seat was just what the Chapter did *not* want.

defies common sense to think it ever expected that either the whole committee or the rump could bind the engineers.[4]

We are now in a position to analyze the judge's "critical finding" that "From at least as early as January 31, 1963" American refused to bargain. This being a mixture of law and fact, one cannot be sure whether he thought American had violated a legal duty by insisting on joint bargaining or that it had done something more. If the former, his conclusion was wrong as a matter of law; if the latter, it would be "clearly erroneous" as a matter of fact. An appellate court need not hesitate to say this when, as here, despite my brothers' repeated suggestions of unspecified issues of credibility, the only real question is the characterization of what was admittedly said and done: *E. F. Drew & Co.* v. *Reinhard*, 170 F. 2d 679, 683-84 (2 Cir. 1948); *Orvis* v. *Higgins*, 180 F. 2d 537 (2 Cir.), cert. denied, 340 U. S. 810 (1950). The standard in reviewing the judgment of a judge is not at all like that in reviewing a verdict or the conclusions of an administrative agency. In the classical formulation, "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *United States* v. *U. S.*

4. A point is made over the fact that in a letter dated January 28, 1963, Whitacre used the verb "recognized" with respect to the Joint Negotiating Committee. The letter was written to Ruby, President of ALPA; its purpose was to explain why American would not comply with his request to start a new negotiation with the ALPA central office and eliminate the Joint Committee in which the Chapter was happily participating. Since Whitacre's letter envisioned no change in the current method of negotiation, there was no need for concern by Schwartz, to whom he had courteously sent a copy, as he did also to Manning and to Chairman Edwards of the NMB. But since Schwartz' letter of January 29 proposing a continuation of the joint negotiation was unexceptionable, there was equally no occasion for Whitacre to reply.

Gypsum Co., 333 U. S. 364, 395 (1948). And the error, whether it be called of law or of fact, in the judge's conclusion that American violated its duty in the period between January 31 and February 28 when the joint committee sessions were proceeding vitiates his conclusions with respect to subsequent periods.

American's opener of February 28 stated that "In accordance with the current negotiations with the Joint Committee of pilot and flight engineer representatives" on the crew complement agreement, the company made various proposals as to the third cockpit position and also that "Cockpit crew members on all aircraft will be consolidated into one craft or class covered by a single basic agreement." It "suggested"—not the strongest verb in the English language—"that bargaining on the above proposals continue under the auspices of the Joint Committee and Mr. Leverett Edwards, Chairman of the National Mediation Board." This was surely a strange proposal to be made by the brazen violator of the Railway Labor Act depicted by the majority—criminals generally do not solicit the presence of the cop. On March 1 the complaint in the *Ruby* action against American was served; if ALPA prevailed in that action, any possibility of a settlement dispensing with the C and I requirement for the third cockpit position would vanish. On March 5 representatives of the engineers met with Chairman Edwards of the NMB to discuss the effect of the action on the negotiations. He is reported to have said that "he thought that was real good, that he thought it was fine that we all go to the court and find out just who represented who around here. In other words, he said we should have a ruling on who the bargaining agents legally are."[5] He also "suggested that we just stop negotiations

5. It is evident that Chairman Edwards was referring only to the bargaining agent *for the pilots*; the complaint in the *Ruby* action had raised no issue as to the flight engineers.

until this ruling was made." There is double hearsay testimony as to Edwards' having said on the following day that he had talked with Whitacre who "wouldn't yield on this joint committee concept and that he was not interested in proceeding with the Flight Engineers as an independent bargaining agent." Edwards "suggested that we [the engineers] try meeting with the company, and if the company didn't want to call it a negotiating session, we just call it a bull session, but at least get with the company and try to carry on some talks." Such "bull sessions" were held on March 6, 8 and 12, in Edwards' presence; as the District Court found, "although many ideas were exchanged, nothing was settled."

This was the setting when, on March 7, Manning sent the company a letter, rather obviously intended for litigating purposes, which accused American of having insisted "on using the so-called 'Joint Committee' approach to deprive our Committee of its rights to an independent voice in the determination of Flight Engineer wages" and of an "intention to sign an agreement with the Pilots affecting Flight Engineers through this device." The Chapter therefore refused to go along with the suggestion in American's opener for continuing negotiations through the joint committee, although it wished not merely "to settle on wages" but "to arrive at a settlement encompassing all issues which relate to a satisfactory crew complement agreement and a basic working agreement," and had "no objection to the presence of Pilot representatives." The accusations as to American's past conduct were unwarranted. American had not insisted on negotiating through a joint committee unless the engineers wished the benefit of a settlement whereby the pilots abandoned their claim to the third cockpit position, a plan which at the time involved a merger of the two groups; it had not suggested that the committee

as such, or anyone other than the Chapter's representatives on the Committee, could settle the engineers' wages; and it had never intended to sign "an agreement with the Pilots affecting Flight Engineers" unless the engineers had become "pilots" by the Chapter's actually signing the December 1 Memorandum of Agreement. Before there was a fair opportunity to resolve the quiddities between continued negotiation through the "Joint Committee" and an altered form of negotiation with the engineers in the presence of pilots (and presumably another negotiation with the pilots in the presence of engineers), in the new situation created by the reopeners and the tense atmosphere generated by ALPA's request for an injunction against American's having any dealings with its own pilots, the Chapter moved on March 12 for leave to intervene and file a complaint in the *Ruby* action, annexing its March 7 letter as a supporting exhibit.

There was no occasion for the Chapter's thus rushing to the court house. A conclusion in the *Ruby* suit favorable to the plaintiff would have had the result of eliminating the joint committee, whereas the opposite one would have left matters as they were. It may be conceded that if litigation by the Chapter was necessary, it was convenient to have this in the *Ruby* action; but there was no emergency requiring it to take immediate resort to the courts rather than to explore the possibilities of some mutually acceptable form of negotiation after the dust raised by the bringing of the *Ruby* action had settled.

Apart from the fact that, as I should suppose, the validity of the Chapter's complaint must be tested by the circumstances existing when it was filed, I see nothing in subsequent developments to warrant American's condemnation. A party whose conduct has, on its reasonable view, been unreasonably challenged in court, need not exert itself

unduly for the benefit of the challenger while the litigation is pending. Stepard's telephone call to Lamond did not alter the Chapter's position that although it wanted a complete settlement, it declined a joint negotiation to that end; in any event I see no reason to think Judge Wyatt discredited Lamond's unchallenged testimony that he authorized Chairman Edwards to tell Schwartz he would meet with the engineers' committee as soon as permitted by his active schedule of court engagements—his deposition, which stretches over hundreds of pages, was taken on March 18 20, 22 and 26, and on March 19 all parties met with Chairman Edwards and with Mr. George Meany, President of the AFL-CIO. Likewise I see nothing sinister in American's giving O'Connell copies of the proposed single agreement at the point this had reached when the Chapter broke off negotiations, with the rates of pay for "flight officers" filled in with the figures which American believed to have been substantially agreed by the engineers' representatives on the Joint Committee. The law does not prohibit an employer's telling employees where negotiations stood when an impasse has been reached. *NLRB* v. *Norfolk Shipbuilding & Drydock Corp.*, 195 F. 2d 632, 637 (4 Cir. 1952); *NLRB* v. *Superior Fireproof Door & Sash Co.*, 289 F. 2d 713, 720 (2 Cir. 1961). O'Connell's testimony was that he intended to explain the documents, "after which some type of balloting will be established" for the men to "express themselves" and that he did not know "how it will be determined whether or not the flight engineers desire to join with the pilots in that organization"; if any such balloting were ever to occur, it would have had to be done under the supervision of the NMB pursuant to §2 Ninth of the Railway Labor Act. Least of all do I comprehend my brothers' ire over American's conduct in July. They complain that the contract between American and Allied

made no reference to the pay of the engineers, although they might well have cause for complaint if it had, as they also seem to charge. What American did obtain from its pilots was an agreement for conversion from a four-man to a three-man jet crew consistent with the December 1 Memorandum of Agreement that Manning had initialed, and a letter from Allied protecting the rights of the engineers to the third seat, which I quote in the margin.[6] It was precisely because this important matter of the crew complement had now been settled, not in conflict with the desires of the engineers but exactly in accord with them, that American no longer felt obliged to insist on joint bargaining and immediately advised that it would resume with the Chapter alone—peculiar conduct for a company which allegedly was using strong-arm tactics and, for reasons not explained by the majority, now "thought the flight engineers were at its mercy."

(2) Affirmance here is an invitation to parties in airline or railroad bargaining disputes to take to the courts con-

6. "In connection with the pilot contract being signed today, the position of the Allied Pilots Association concerning the flight engineers on American Airlines should be made clear to the company. It is not our intention that the documents signed today be interpreted as covering, or in any way jeopardizing, the rights of the American flight engineers.

"If at any time in the future the American Airlines flight engineers indicate a desire to become part of the American pilot group and they have so indicated by the positive action of a majority of their group that they wish to join with us and to have one union in the cockpit, the Allied Pilots Association will accept all American flight engineers as pilot members, on fair and reasonable terms respecting the rights of both the flight engineers and the pilots. These terms shall include guaranteeing the priority to each flight engineer, in accordance with his seniority to the third seat on all aircraft operated by the company with three or more cockpit crew members, and the right to nondiscriminatory representation."

troversies as to which Congress directed that resolution should be sought under the supervision of the NMB.

The cases in which judicial intervention under the Railway Labor Act has been deemed proper despite the absence of express provision to that end fall into several categories. There are the cases, of which *Texas & N. O. R.R.* v. *Brotherhood of Ry. Clerks*, 281 U. S. 548, 565-66 (1930), is the progenitor, involving specific and then unique directives for maintaining the *status quo* in a labor dispute. See *Chicago, R. I. & P. R.R.* v. *Switchmen's Union*, 292 F. 2d 61, 66 (2 Cir. 1961), cert. denied, 370 U. S. 936 (1962). There are the decisions, stemming from *Steele* v. *Louisville & N. R.R.*, 323 U. S. 192 (1944), and *Tunstall* v. *Brotherhood of Locomotive Firemen & Enginemen*, 323 U. S. 210 (1944), which concern racial discrimination by bargaining representatives, and those relating to the use of union funds for political purposes. *International Ass'n of Machinists* v. *Street*, 367 U. S. 740 (1961). There is the principle that a court may forbid either party's violating the provisions for compulsory arbitration of a "minor dispute." *Brotherhood of Railroad Trainmen* v. *Chicago River & I. R.R.*, 353 U. S. 30 (1957); *Brotherhood of Locomotive Engineers* v. *Louisville & N. R.R.*, 373 U. S. 33 (1963). These lines of authority afford no support for intervention here, since none involves the courts in the intricacies of labor-management disputes. The only Supreme Court precedent in any way relevant is thus *Virginian Ry. Co.* v. *System Federation No. 40*, 300 U. S. 515 (1937).

When the facts in the *Virginian* case are analyzed, the difference between it and the instant case, even on the unfavorable view of American's conduct taken by the majority, outweigh the similarities. There the district court had found, 11 F. Supp. 621, 624-27 (E. D. Va. 1935), and had been sustained by the Court of Appeals in finding, 84 F. 2d 641, 643 (4 Cir. 1936), continued refusal by the

railroad to confer in any way with a union certified by the NMB after an election in which it had been strenuously opposed by the railroad, and active sponsorship both to the defeated union and to a new one later organized. See also 300 U. S. 539-42. The NMB had done everything it possibly could; unless an injunction issued, the processes of the Railway Labor Act would have been stopped before having a chance to operate. Here American and the Chapter were engaging in a semantic quibble. Everyone agreed that the pilots and the engineers ultimately must be brought into line in some way; American, on the worst possible view, wanted to bargain with a joint committee "representing" pilots and engineers, whereas the Chapter wanted to bargain for the engineers separately but with the pilots present. Assuming, contrary to my belief, that the Chapter could properly insist on this, the gap was scarcely so wide that all possibility of the NMB's bridging it by mediation pursuant to §5 First was *a priori* excluded. Yet the Chapter invoked the judicial process twelve days after exchange of the 1963 openers, before any of the machinery provided in the Railway Labor Act had a fair chance to operate. Judicial refusal to entertain such a complaint would by no means leave the plaintiff without remedy, as it would have in the *Virginian Ry.* case; any serious assertion by American that some other entity could bind the flight engineers would have led ultimately to action by the NMB under §2 Ninth in which the legality of American's previous conduct would be investigated.

Courts are ill equipped to assist in solving controversies like this; I cannot help thinking that the diversion of the energies of the parties incident to compiling this enormous record, with 21 days of depositions or hearings, more than 3600 pages of depositions and trial transcript and hundreds of exhibits, in which every nuance of the negotiations was explored in tiresome detail, and the attending

exacerbations, have postponed rather than expedited a solution of the engineers' problems—not to speak of the drain on the time of an over-burdened district court. The net result of all this activity has been the dismissal of ALPA's complaint[7] and an order requiring American to treat with the Chapter as it was then doing, and had been willing to do in a joint negotiation when the Chapter went to court. Meanwhile, save for whatever progress may have been made as a result of American's action of July 11, 1963, the processes of negotiation and mediation contemplated by §§2 First and Second, 5 and 6 of the Railway Labor Act have been at a standstill.

This picture does not square with my concept of the limited role of the courts in airline or railroad labor disputes, where Congress has chosen to rely so heavily on negotiation and mediation rather than on adversary proceedings. In other kinds of commerce as to which Congress has been far more prone to depend on the adversary process, see *Ruby* v. *American Airlines, supra,* 323 F. 2d at 254, a complaint like the Chapter's would take the form of a charge to the National Labor Relations Board; it would be processed only if administrative screening showed it to have probable merit; and it would come before the courts in advance of agency decision only in the rare case where suit was brought by the Board under §10(j) of the National Labor Relations Act, 29 U. S. C. §160(j).[8] As

7. It is recognized that a considerable portion of the record related to the dispute between ALPA on the one hand and American and the American pilots on the other. But we indicated in *Ruby,* 323 F. 2d at 256, that the complaint in that case should have been dismissed rather early in the game when it appeared that a dispute existed which would require action by the NMB under §2 Ninth.

8. The last three Annual Reports of the National Labor Relations Board reveal only one petition for injunctive relief for refusal to bargain in 1960, p. 148, none in 1961, p. 185, and four in 1962, pp. 233-34.

the Supreme Court said in *General Committee* v. *Missouri-K.-T. R.R.*, 320 U. S. 323, 333 (1943), in a slightly different context, "The inference is strong that Congress intended to go no further" to involve the courts in such matters "than the express provisions of the [Railway Labor] Act indicate." When a complaint claims only a violation of the general duties imposed on labor and management by the first six paragraphs of §2 of the Railway Labor Act, a court ought to make sure that a plaintiff's resort to the judicial arena will advance rather than hinder the purposes of the Act. Before it proceeds with the case it should demand a preliminary showing of a serious violation not susceptible of resolution through the machinery of the Act, and should require that showing to be made good before it grants a judgment. See also *Ruby* v. *American Airlines, Inc., supra,* 323 F. 2d at 254-56.

(3) When an injunction is sought, judicial restraint is called for not only by the scheme and structure of the Railway Labor Act but by the Norris-La Guardia Act as well, 29 U. S. C. §§101-15. It is true enough that, as said in the *Virginian Ry.* case, 300 U. S. at 563, the provisions of the Railway Labor Act "cannot be rendered nugatory by the earlier and more general provisions of the Norris-La Guardia Act," and also "that the Norris-La Guardia Act cannot be read alone in matters dealing with railway labor disputes." *Brotherhood of Railroad Trainmen* v. *Chicago River & I. R.R., supra,* 353 U. S. at 40. But, as we held in *Chicago, R. I. & P. R.R.* v. *Switchmen's Union, supra,* 29 F. 2d at 64-67, relating to an anti-strike injunction for an alleged union violation of its duty to bargain, that is a long way from saying that the Norris-La Guardia Act is to be wholly disregarded whenever an injunction is sought to prevent an alleged violation of the Railway Labor Act. See *Order of Railroad Telegraphers* v. *Chicago & N. W.*

Ry., 362 U. S. 330, 338 and fn. 14 (1960); *Missouri-Illinois R.R.* v. *Order of Railway Conductors*, 322 F. 2d 793, 798 (8 Cir. 1963). The policy behind the Norris-La Guardia Act is strong and persistent, as the recent decision in *Sinclair Refining Co.* v. *Atkinson*, 370 U. S. 195 (1962), attests. Compare *Publishers' Ass'n of New York City* v. *New York Mailers' Union*, 317 F. 2d 624, 626-28 (2 Cir.), cert. granted, 375 U. S. 901 (1963). "* * * Congress was intent upon taking the federal courts out of the labor injunction business except in the very limited circumstances left open for federal jurisdiction under the Norris-La Guardia Act." *Marine Cooks* v. *Panama SS. Co.*, 362 U. S. 365, 369 (1960).

In contrast to the check-off appeal, No. 28461, this day decided, I see nothing in the circumstances here that would cause application of the Norris-La Guardia Act to conflict with the provisions of the Railway Labor Act, see 300 U. S. at 563; to the contrary, the policies of the two statutes coincide. Yet even if we assumed *arguendo* that the Chapter had met the requirement of §7(a), 29 U. S. C., §107(a), of showing that "unlawful acts" had been threatened or committed, I cannot see how it could be found that when the Chapter sought an injunction, it had made "every reasonable effort to settle" the dispute as to the handling of its opener of February 28, 1963, "either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration" or that, when the injunction issued on August 19, 1963, unlawful acts would be "committed * * * or * * * continued unless restrained" or that "substantial and irreparable injury to complainant's property" would have followed from denial, as §§8 and 7(a) and (b) of the Norris-La Guardia Act require. Quite apart from that statute, a party asking injunctive relief (as distinguished from one merely seeking to avoid dismissal for mootness) "must satisfy the court that relief is needed * * *, that there exists some cognizable

danger of recurrent violation, something more than the mere possibility which serves to keep the case alive . . . . To be considered are the bona fides of the expressed intent to comply, the effectiveness of the discontinuance and, in some cases, the character of the past violations,'' *United States* v. *W. T. Grant Co.*, 345 U. S. 629, 633 (1953). Even if I am wrong in concluding that American did not violate the Railway Labor Act, any violation consisted of a few unclear expressions which American had withdrawn by its letter of July 11; and the consummation of its negotiations with its pilots ended any need for the joint bargaining over which the whole squabble revolved. It is no answer that the injunction does little harm; apart from all else, for reasons previously outlined, efforts to involve a federal court in airline or railroad labor disputes in the absence of any compelling need for intervention ought not be thus encouraged.

For these three reasons, any one of them sufficient, I would reverse.

Order of the United States Court of Appeals For the Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the fourteenth day of February one thousand nine hundred and sixty-four.

Present:

Hon. J. Edward Lumbard,
Chief Judge,
Hon. Harold R. Medina,
Hon. Henry J. Friendly,
Circuit Judges.

Charles H. Ruby, as President of the Air Line Pilots Association, International, and Air Line Pilots Association, International,

Plaintiffs,

v.

American Airlines, Inc.,
Defendant-Appellant,

Nicholas J. O'Connell, Jr., etc., et al.,
Additional Defendants-Appellants,

Joseph V. Manning, etc., et al.,
Intervenors-Appellees.

Order of the United States Court of Appeals
For the Second Circuit

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed with costs to the intervenors-appellees.

A. Daniel Fusaro
Clerk

Petition for Rehearing

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

CHARLES H. RUBY, as President, etc.,
Plaintiffs,

v.

AMERICAN AIRLINES, INC.,
Defendant-Appellant,

and

NICHOLAS J. O'CONNELL, *et al.*,
Additional Defendants-Appellants,

and

JOSEPH V. MANNING, as President, etc.,
Intervenors-Appellees.

Arthur M. Wisehart, New York, N. Y.,
for appellant American Airlines, Inc.

Petition denied.

J. E. L.
H. R. M.
U.S.C.JJ.

I dissent.

H. J. F.
U.S.C.J.

Apr 10 1964

Petition for Rehearing In Banc

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

CHARLES H. RUBY, as President, etc.,
Plaintiffs,

v.

AMERICAN AIRLINES, INC.,
Defendant-Appellant,

and

NICHOLAS J. O'CONNELL, *et al.*,
Additional Defendants-Appellants,

and

JOSEPH V. MANNING, as President, etc.,
Intervenors-Appellees.

Arthur M. Wisehart, New York, N. Y.,
for appellant American Airlines, Inc.

As no active circuit judge has requested that this case be reheard in banc, and as Judge Medina, who is qualified to vote thereon by virtue of 28 U. S. C. §43 votes to deny, the petition is denied.

J. EDWARD LUMBARD
Chief Judge

Apr 10 1964

Petition for Rehearing

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

CHARLES H. RUBY, as President, etc.,
Plaintiffs,

v.

AMERICAN AIRLINES, INC.,
Defendant-Appellant,

and

NICHOLAS J. O'CONNELL, *et al.*,
Additional Defendants-Appellants,

and

JOSEPH V. MANNING, as President, etc.,
Intervenors-Appellees.

Martin C. Seham, New York, N. Y., for additional appellants Nicholas J. O'Connell, *et al.*

Petition denied.

J. E. L.
H. R. M.
U.S.C.JJ.

I dissent.

H. J. F.
U.S.C.J.

Apr 10 1964

Petition for Rehearing In Banc

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

CHARLES H. RUBY, as President, etc.,
Plaintiffs,

v.

AMERICAN AIRLINES, INC.,
Defendant-Appellant,

and

NICHOLAS J. O'CONNELL, *et al.*,
Additional Defendants-Appellants,

and

JOSEPH V. MANNING, as President, etc.,
Intervenors-Appellees.

Martin C. Seham, New York, N. Y.,
for additional appellants Nicholas J.
O'Connell, *et al.*

As no active circuit judge has requested that this case be reheard in banc, and as Judge Medina, who is qualified to vote thereon by virtue of 28 U. S. C. §43 votes to deny, the petition is denied.

J. EDWARD LUMBARD
Chief Judge

Apr 10 1964

Order Extending Time to File Petition for Writ of Certiorari

SUPREME COURT OF THE UNITED STATES

No. ....., October Term, 1964

AMERICAN AIRLINES, INC., *et al.*,

Petitioners,

vs.

JOSEPH V. MANNING, etc., *et al.*

UPON CONSIDERATION of the application of counsel for petitioner(s),

IT IS ORDERED that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including September 5, 1964

/s/ JOHN M. HARLAN
Associate Justice of the Supreme Court of the United States.

Dated this 1st day of July 1964

Order of the District Court With Respect to Petitioner American Airlines, Inc.

[Same Title]

Intervenors' motion for a preliminary injunction in their favor and against the defendant having come on for hearing, and the Court having considered the pleadings, the affidavits submitted in support of said motion and in opposition thereto, the evidence introduced in open court, and the memoranda of law submitted by the parties, and the Court having separately made and filed findings of fact and conclusions of law, it is

Ordered that defendant, American Airlines Inc. its officers, agents and employees, be and hereby are enjoined and restrained until final hearing and judgment:

1. From engaging in negotiations and collective bargaining concerning rules, rates of pay and working conditions of the employees of defendant American Airlines, Inc., or any of them, employed in the craft or class of Flight Engineers, with any person, organization or group, other than the American Airlines Chapter, Flight Engineers' International Association, AFL-CIO.

2. From making, publishing or implementing, or in any manner causing to be made, published or implemented any agreement covering the rules, rates of pay or working conditions of the employees of defendant American Airlines, Inc., or any of them, employed in the craft or class of Flight Engineers, except such agreement or changes therein as may result from collective bargaining between defendant American Airlines, Inc., and the American Airlines Chapter, Flight Engineers' International Association, AFL-CIO.

Order of the District Court With Respect to Petitioner American Airlines, Inc.

3. From, directly or indirectly, in any way, manner of form, or by any means whatsoever, interfering with, influencing or coercing any of its flight engineer employees with respect to their free and untrammeled right of selecting or designating their representative or representatives for the purpose of making and maintaining agreements with American Airlines, Inc., relating to rules, rates of pay and working conditions, as well as for any and all other purposes of the Railway Labor Act (45 U. S. C. A. §151 and following):

and it is further

ORDERED that defendant American Airlines, Inc., by and through its duly authorized officers, agents, and employees, shall treat with American Airlines Chapter, Flight Engineers' International Association, AFL-CIO, and exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions respecting the craft or class of flight engineers; and it is further

ORDERED that under Fed. R. Civ. P. 65(c) intervenors are to give security in the form of a bond, with corporate surety, to be approved by the Court in the sum of one thousand dollars ($1000) conditioned for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

Nothing in this order is intended to limit any rights which any party may have under the Railway Labor Act (45 U. S. C. A. §151-188).

Dated: New York, New York
August 19, 1963

INZER B. WYATT
United States District Judge

Order of the District Court With Respect to Petitioners O'Connell, *et al.*

[SAME TITLE]

Intervenors' motion for a preliminary injunction in their favor and against the additional defendants having come on for hearing, and the Court having considered the pleadings, the affidavits submitted in support of said motion and in opposition thereto, the evidence introduced in open court, and the memoranda of law submitted by the parties, and the Court having separately made and filed findings of fact and conclusions of law, it is

ORDERED that the additional defendants Nicholas J. O'Connell, Jr., individually and as Chairman of the Master Executive Council of the pilots in the service of American Airlines Inc., and the Negotiating Committee of said pilots, consisting of Richard Lyons, Robert T. Guba, Joseph Garvey, Paul Atkins and Nicholas J. O'Connell, Jr., ex officio, and their agents and employees, be and hereby are enjoined and restrained until final hearing and judgment:

1. From engaging in negotiations and collective bargaining concerning rules, rates of pay and working conditions of the employees of defendant American Airlines, Inc., or any of them, employed in the craft or class of Flight Engineers.

2. From making, publishing or implementing, or in any manner causing to be made, published or implemented any agreement covering the rules, rates of pay or working conditions of the employees of defendant American Airlines, Inc., or any of them, employed in the craft or class of Flight Engineers.

Order of the District Court With Respect to Petitioners O'Connell, et al.

3. From, directly or indirectly, in any way, manner or form, or by any means whatsoever, interfering with, influencing or coercing any of the flight engineer employees of defendant American Airlines, Inc. with respect to their free and untrammeled right of selecting or designating their representative or representatives for the purpose of making and maintaining agreements with said American Airlines, Inc., relating to rules, rates of pay and working conditions, as well as for any and all other purposes of the Railway Labor Act (45 U. S. C. A. §151 and following);

and it is further

ORDERED that under Fed. R. Civ. P. 65(c) intervenors are to give security in the form of a bond, with corporate surety, to be approved by the Court in the sum of Two hundred and Fifty Dollars ($250) conditioned for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

Nothing in this order is intended to limit any rights which any party may have under the Railway Labor Act (45 U. S. C. A. §151-188).

Dated: New York, New York, August 19, 1963.

INZER B. WYATT
United States District Judge

Opinion of the United States Court of Appeals For the Second Circuit

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Cal. No. 419—October Term, 1962

(Argued September 5, 1963 Decided September 16, 1963)

Docket No. 28417

CHARLES H. RUBY, as President of the AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, and AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, an unincorporated association,

Appellants,

v.

AMERICAN AIRLINES, INC.,

Appellee,

and

NICHOLAS J. O'CONNELL, JR., individually, and as Chairman of the Master Executive Council of the pilots in the service of AMERICAN AIRLINES, INC., and the Negotiating Committee of said pilots, consisting of RICHARD LYONS, ROBERT T. GUBA, JOSEPH GARVEY, PAUL ATKINS and NICHOLAS J. O'CONNELL, JR., ex officio,

Additional Appellees.

Before:

CLARK, WATERMAN and FRIENDLY, *Circuit Judges.*

Appeal by plaintiffs from a judgment of the District Court for the Southern District of New York, Inzer B. Wyatt, Judge, dismissing their complaint in an airline labor dispute for lack of jurisdiction over the subject matter. Affirmed.

HENRY WEISS (Cohen and Weiss), New York, N. Y., (Herbert A. Levy, of Counsel), *for Appellants.*

ARTHUR M. WISEHART, New York, N. Y. (George A. Spater, of Counsel), *for Appellee American Airlines.*

MARTIN C. SEHAM, New York, N. Y., *for Additional Appellees.*

CARL EARDLEY, MORTON HOLLANDER and HOWARD E. SHAPIRO, Attorneys, Dept. of Justice, Washington, D. C., *filed Brief Amicus Curiae on behalf of the National Mediation Board.*

FRIENDLY, *Circuit Judge:*

This appeal again raises the problem as to the role of the courts with respect to labor disputes in an industry governed by the Railway Labor Act, 45 U. S. C. §§151-188. The Air Line Pilots Association (ALPA), a nationwide union of airline pilots, endeavored in this action to protect its historic status as bargaining representative of American Airlines' pilots, primarily by seeking injunctions that would prevent the defendants—American and a negotiating committee of American pilots which later became the nucleus of a new union—from dealing with one another, and would require American to negotiate with ALPA instead. We affirm the conclusion of the District Court that ALPA made no case warranting judicial intervention in this area, which Congress has so largely committed to the National Mediation Board.

In view of Judge Wyatt's comprehensive statement of the facts we shall limit ourselves to those we deem most important.[1] American Airlines' last pilot contract before

1. Judge Wyatt's opinion also dealt with a related dispute between American and the Flight Engineers' International Association. This is not before us, and we intimate no views in its regard.

the instant dispute was made with the air line pilots in its service "as represented by the AIR LINE PILOTS ASSOCIATION, INTERNATIONAL", which, as the contract recited, "has shown satisfactory proof to the Company of the fact that it represents more than a majority of the air line pilots of the Company." The contract was to be effective until July 21, 1960, and was to renew itself annually thereafter unless written notice of intended change was served, pursuant to §6 of the Railway Labor Act, 45 U. S. C., §156, at least 60 days prior to July 21 in any year. In March, 1961, American sent such a notice to the president of ALPA, and ALPA sent such a notice to American.

To appreciate the relationship of the parties and the source of the controversy, some understanding of ALPA's structure is required. The basic unit is a Local Council composed of the member pilots of a single airline at an operating base. Certain officers of the Local Councils constitute the airline's Master Executive Council (MEC); this body is "empowered to make the final decision on any problem or problems of the members of that air line, except as provided elsewhere in the Constitution and By-Laws." The Chairman of the MEC is "An ex officio member of the Negotiating Committee." The Negotiating Committee is not otherwise described in the Constitution and By-Laws, but the ALPA Policy Manual says that it shall be selected by the MEC on each airline, and that it "shall have the authority to conclude an agreement subject to the provisions of Article XVIII of the Constitution and By-Laws," which provides that conferences or negotiations to make employment agreements shall not be initiated, carried on, or concluded in the name of ALPA without the prior approval of the Executive Committee or the President, and that no such agreement shall become effective unless signed by the President or some other officer authorized

by one of ALPA's central governing bodies. The latter are a Board of Directors containing representatives of all the Local Councils, an Executive Board containing the chairmen and vice-chairmen of all the Master Executive Councils, and an Executive Committee. Thus, while the established procedure is for an agreement with an airline to be negotiated by a committee of its own pilots, the negotiation takes place under the eye of ALPA's central organization and the agreement is not concluded without the approval of the upper echelon of ALPA's policy makers.

The negotiations that began in 1961 between American and a pilots' negotiating committee, formed in accordance with ALPA policy,[2] were complicated from the outset by the controversy as to cockpit crew complement on jet aircraft which has occasioned a number of disputes and strikes and has been the subject of two decisions of this court. *Pan American World Airways* v. *Flight Engineers Int'l Ass'n*, 306 F. 2d 840 (2 Cir. 1962); *Flight Engineers Int'l Ass'n* v. *Eastern Air Lines*, 311 F. 2d 745 (2 Cir. 1963). On October 21, 1961, American notified the ALPA negotiating committee that it accepted the recommendations of a commission, appointed by President Kennedy and chaired by Professor Nathan Feinsinger, that the cockpit crew on jet aircraft should consist of three persons (as desired by the airlines) rather than four; that a flight engineer serving as one of the three should be possessed of a Commercial Pilot's Certificate and Instrument Rating ("C and I") (as desired by ALPA); and that ALPA and the Flight Engineers' International Association should merge, with the job equities of the pilots and engineers reasonably protected. On November 7, 1961, the President

2. It was customary for an employee of ALPA to attend such meetings as "staff negotiator." Later, in November, 1962, ALPA withdrew its representative from the discussions between American and its pilots.

of ALPA wrote the National Mediation Board (NMB) that the crew complement problems were "but minor issues on American Airlines" as compared with pilot proposals on retirement and working conditions, notably a reduction of hours. American took the position that it could not grant these if it also had to undergo the expense of training its flight engineers up to the C and I requirement. After mediation by the NMB proved unsuccessful and ALPA declined a suggestion of arbitration which American had accepted, the NMB, on July 18, 1962, notified the parties that its services had terminated. This left American's pilots free to strike after the lapse of 30 days, 45 U. S. C. §155 First, unless an Emergency Board were appointed as provided in 45 U. S. C. §160.

Shortly before this, the Secretary of Labor had achieved a break-through on the problem of cockpit crew complement as to TWA, on the basis of the Feinsinger Commission's recommendations. American's engineers approved these terms but the Company informed the Department of Labor that this settled nothing, since the American pilots had preferred a reduction in hours and other benefits to the four man crew and had recently expressed a preference that American spend its money for such benefits rather than in qualifying flight engineers for the full C and I certificate.[3] During July, 1962, various meetings were held between the Labor Department, Chairman Edwards of the NMB, the company, the negotiating committee (including the ALPA staff representative), and Ruby who had

3. ALPA's interest in the C and I rating for the third member of the cockpit crew reflected its position that this was desirable for operating reasons, despite less stringent government requirements, and doubtless also a belief that some flight engineers would not qualify for the higher rating, thereby leaving more cockpit positions for the pilots and thus cushioning the impact of the reduction in pilot positions threatened by the introduction of the larger and faster jets.

recently become president of the ALPA. In the course of these, O'Connell, Chairman of the American MEC and one of the pilot negotiators, expressed the preferences of the American pilots along the lines just stated. At later meetings, O'Connell proposed that, if American would grant its pilots reduced hours and an improved retirement plan, they would agree to the three man crew without insisting on the C and I, and would bring the flight engineers into ALPA as the Feinsinger Commission had proposed. Since the pilots' willingness to relinquish the C and I requirement conflicted with what had been ALPA policy, American raised the question whether they could secure an ALPA approving signature; the negotiating committee expressed optimism. During November the Company met with the pilots and the flight engineers jointly; these conferences led to a memorandum of agreement on crew complement, initialed on December 1 by representatives of the three parties, along the lines indicated.

Meanwhile relationships between the pilots' negotiating committee and the ALPA central organization were deteriorating. Since by this time many other major air lines had concluded agreements incorporating the C and I requirement, ALPA objected strenuously to the nonconforming negotiations of the American pilots and sought, both by resolution and by appeal to the NMB, to terminate the American negotiations until the question of crew complement was resolved in writing to its satisfaction. ALPA's efforts did not prevent initialing of the December 1 memorandum but, on December 6, American agreed with Ruby, over the dissent of O'Connell, that negotiations be recessed until January, 1963—apparently for the purpose of giving the ALPA negotiating committee and the ALPA central organization time to work out their differences. Nothing was accomplished. At meetings at ALPA's Chicago head-

quarters early in January, Ruby and the ALPA Executive Committee remained adamant on the C and I, whereas the American MEC resolved unanimously to authorize the negotiating committee to conclude an agreement without this. On January 11, 1963, Ruby notified the committee and American that no negotiations could occur without his approval. The same day O'Connell requested resumption of negotiations and said that any agreement would be submitted for ratification by American pilots, acting with a 75% vote which, he asserted, could readily be secured. American consulted Chairman Edwards of the NMB; he advised that the company had no choice but to bargain with the committee. Negotiations were resumed on January 16, with the ALPA staff member absent but with a Mediation Board representative always present. Ruby countered with a series of communications apprising all parties of ALPA's view that the negotiations were unauthorized and endeavoring unsuccessfully to initiate a negotiation with the ALPA home office. American asked how a new committee of American pilots could be designated; Ruby had no solution save "bringing the existing committee in or whatever arrangement was necessary." In early February the ALPA Executive Board adopted resolutions declaring that the American MEC and the negotiating committee "are not the bargaining representative of the American Airlines pilots" and directing Ruby or his representative to negotiate and conclude an agreement with American. Efforts by ALPA employees to join the negotiating sessions having proved abortive, it instituted this action, on March 1, 1963, seeking to enjoin American from bargaining with anyone other than the plaintiff. American reached an understanding with its pilots on March 15. The proposed agreements referred to ALPA and provided for signature by it, which could not occur unless

ALPA, now confronted with a completed contract, should reverse its previous position.

The break was not long in coming. The American MEC unanimously ratified the March 15 agreements. Ruby, who was invited to some of the sessions, said he would not sign these or any other agreements not containing a C and I requirement for the third man. The MEC thereupon authorized the formation of a new organization, Allied Pilots Association, to represent the American Pilots.[4] On April 12, Allied sent out cards which would authorize it to be the collective bargaining representative of the American pilots and to seek certification under §2 Ninth of the Railway Labor Act, 45 U. S. C. §152 Ninth. ALPA amended its complaint to include O'Connell and the other members of the negotiating committee as additional defendants. On April 24 Allied filed an application with the NMB, stating that a representation dispute had arisen among American's pilots and asking for an investigation and certification under §2 Ninth; it claimed to have authorization cards from 1150 out of 1600 pilots.

The NMB promptly invited American and ALPA to submit any statements they cared to make. ALPA called the NMB's attention to this action, and the allegations of assistance, influence and coercion by American made therein. American filed a petition for leave to intervene and a letter giving its version of the facts and denying any improper conduct. On May 24, 1963, the NMB advised that Allied's application had been given a preliminary investigation by a mediator; that the Board, having "reviewed all the information now in its possession", was

4. Judge Wyatt found "There is no evidence that the Company suggested, encouraged or even knew in advance about the determination of the American pilots to leave ALPA over the 'C and I' issue and form their own organization."

"of the opinion no issues have been raised which warrant further preliminary proceedings" or deferral of the processing of Allied's application pending the outcome of current litigation; and that it had directed that the application be docketed as Case No. R-3619 and that a mediator be assigned for further handling in accordance with usual procedures.[5] After receipt of further letters from ALPA's attorney, the Board, on June 5, adhered to this position. On June 13, the mediator reported he had found acceptable authorization cards from 84% of the eligible pilots and recommended that a mail ballot election be held. NMB directed that such an election be conducted. This has not occurred due to an action brought by ALPA against the members of the Board in the District of Columbia wherein the NMB has been stayed from proceeding with the election pending determination in the action now before us.

Allied responded to ALPA's District of Columbia suit by demanding, on June 19, that American recognize it and sign the March 15 agreements. Its letter pointed out that the delays were resulting "in a financial gain to American Airlines" and corresponding detriment to the pilots since "working conditions obviously cannot be made retroactive." A further letter, of July 3, 1963, emphasized and amplified this position, alleging that the proportion of the pilots voting for representation by Allied was now more than 90% and making the pointed suggestion "There is no restriction on the freedom of American's pilots to enforce, by whatever means necessary, their right to be represented by an organization of their own choosing." On July 9,

5. Previously the case had been known as C-3351. We were informed at argument that the "C" Docket contains cases which are the subject of preliminary investigation whereas the "R" Docket is for cases which are thought may be ripe for a representation election. ~~majority of the pilots have authorized Allied to act as~~

noting "There can be no question but that the overwhelming majority of the pilots have authorized Allied to act as their bargaining representative", American recognized Allied and signed the agreements.

Meanwhile the District Court was taking evidence in this action, the hearing (which included the related claim of the flight engineers) having consumed part or all of 21 court days and the transcript extending over nearly 3200 pages. In opinions dated August 12, 1963, Judge Wyatt denied ALPA's motion for a temporary injunction and directed the summary judgment dismissing the complaint for want of jurisdiction over the subject-matter from which this appeal is taken.

Mere statement of the facts makes it apparent that *Switchmen's Union* v. *National Mediation Board*, 320 U. S. 297 (1943), and the two other cases decided therewith, *General Committee* v. *Missouri-K.-T. R. Co.*, 320 U. S. 323 (1943), and *General Committee* v. *Southern Pacific Co.*, 320 U. S. 338 (1943), constitute a formidable obstacle to the maintenance of this action. The *Switchmen's* case[6] held that a district court was without jurisdiction to cancel a certification by the NMB, under §2 Ninth, that a particular union was the duly designated representative of certain employees, with whom "the carrier shall treat". Any attempt to distinguish the *Switchmen's* case on the basis that there has as yet been no certification of Allied runs counter to the consideration that a suit to review administrative action usually stands on a better footing than one whose maintenance would prevent an administra-

6. This has been termed "Much the most important case holding that a statute inexplicitly precluded review," 4 Davis, Administrative Law Treatise 42 (1958). It is criticized by Davis and also by Jaffe, The Right to Judicial Review, 71 Harv. L. Rev. 401, 428-31 (1958).

tive agency from performing its statutory duty.[7] *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U. S. 41 (1938); *Macauley* v. *Waterman S. S. Corp.*, 327 U. S. 540 (1946). ALPA relies primarily on another basis of distinction, namely, that the trilogy in 320 U. S. related to jurisdictional disputes between unions rather than, as here, to action by an employer alleged to violate various commands of the Act, notably the mandate of §2 Fourth that an employer shall not "influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization * * *." Its two step arguments is, *first*, that, by offering economic inducements to cause its pilots to desert ALPA for Allied, American was guilty of the sort of conduct held to constitute an unfair labor practice under the National Labor Relations Act in *Medo Photo Supply Corp.* v. *NLRB*, 321 U. S. 678 (1944), and like cases, and, *second*, that since the Railway Labor Act affords no such opportunity as the National Labor Relations Act for a full administrative hearing and determination, which would result in disqualifying a union found to have benefitted from unlawful conduct by the employer,[8] the federal courts should fill the supposed statutory vacuum.

7. If, as is at least theoretically possible, the vote of the American pilots should favor ALPA rather than Allied, the decree sought would be unnecessary—save perhaps for the limited purpose of cancelling a contract made with a representative which turned out not to be one "duly designated." Compare *American Seating Co.*, 106 NLRB 250 (1953).

8. When a charge of such a practice, having *prima facie* merit, is filed before a representation election, the NLRB will customarily postpone the election until it has passed upon the charge. See *Surprenant Mfg. Co.* v. *Alpert*, 318 F. 2d 396, 397 (1 Cir. 1963), citing *United States Coal & Coke Co.*, 3 NLRB 398 (1937), and the NLRB's Third Annual Report (1939) 143.

We would be unable to take the first step in the argument if that issue required resolution. Whether or not we would have been obliged to sustain an administrative determination that American had violated the statute if one had been made, we would not make any such finding on our own account—much less set aside the District Judge's contrary one. The case differs essentially from *Medo*. Although the pilots' proposal to forego the C and I requirement in return for economic benefits was doubtless to American's liking, the offer came from the ALPA negotiating committee, and did so at a time when, as American was told, there was still basis for hope that the central organization would go along: American never conditioned its willingness to grant economic benefits upon the pilots' withdrawing from ALPA; on the contrary, a solution leaving them in ALPA would have facilitated merger of the flight engineers into that organization and an amicable disposition of the entire controversy. Rather than refusing to deal with the union's bargaining representative and negotiating with the employees directly, as the employer did in *Medo*, American dealt for months with the very group with which ALPA's Constitution and By-Laws and Policy Manual told it to deal; and when an impasse developed through ALPA's refusal to accept the results of the negotiation, a refusal wholly within its rights, ALPA was unable to supply a substitute negotiating committee that accorded with past practice and its own Policy Manual. American recognized Allied only when possessed of substantial evidence that Allied represented an overwhelming proportion of its pilots and when threatened with a strike if it refused recognition. Under such circumstances recognition by an employer who has not been guilty of a relevant unfair labor practice need not wait certification, although he acts at peril of being right; the facts are far closer to those in

NLRB v. *Indianapolis Newspapers, Inc.*, 210 F. 2d 501 (7 Cir. 1954), cited in *United Mine Workers* v. *Arkansas Oak Flooring Co.*, 351 U. S. 62, 72 fn. 8 (1956), and in *District 50, United Mine Workers* v. *NLRB*, 234 F. 2d 565 (4 Cir. 1956), than to those in *Medo*. Compare *NLRB* v. *Superior Fireproof Door & Sash Co.*, 289 F. 2d 713, 719 (2 Cir. 1961).

However, we need not decide this issue since we find that the distinction of the *Switchmen's* case asserted by ALPA is not legally sufficient on the facts here. In both cases the basic claim is of unlawful deprivation of the important rights to representation guaranteed by § 2—in the *Switchmen's* case by the Board's allegedly unlawful selection of a bargaining unit, here by the Board's allegedly unlawful condonation of illegal tactics by American. It was obvious almost from the beginning of this action that it concerned the proper representation of American's pilots, a subject which Congress has given the Mediation Board the duty to determine.

Appellants seek to bring themselves within two areas heretofore recognized as appropriate for judicial intervention in Railway Labor Act matters—the duty of the courts to require the carrier to bargain with the duly designated representative, *Virginian Ry. Co.* v. *System Federation No. 40*, 300 U. S. 515 (1937), and, very likely, when necessary, a duty to require the Mediation Board to do what Congress commanded, namely, to investigate and certify—the point reserved by the Supreme Court in the *M.K.T.* case, 320 U. S. at 336 fn. 12; cf. *Order of Railway Conductors* v. *Pennsylvania R. Co.*, 323 U. S. 166 (1944), and decided in *Air Line Dispatchers Ass'n* v. *National Mediation Board*, 189 F. 2d 685 (D. C. Cir.), cert. denied, 342 U. S. 849 (1951). The case does not fall within the first of these principles. For, even though we accept appellants' argument that, in the light of § 2 Second, Fourth and Sixth, it is not fatal that

ALPA never had been certified so as to come within the precise command of § 2 Ninth that the employer "treat with the representative so certified", the courts cannot properly require an employer to bargain with a previously designated representative in the face of a substantial representation dispute requiring the intervention of the Mediation Board under § 2 Ninth—a development which became an almost inevitable prospect within a few weeks after this action was brought on March 1 and crystallized into a certainty by late April.

Appellants have likewise failed to make a case for invoking the second possible judicial role. The Board's duty to investigate is a duty to make such investigation as the nature of the case demands. See *WES Flight Engineers Int'l Ass'n* v. *National Mediation Board*, 314 F. 2d 234, 237 (D. C. Cir. 1962), a decision which weighs heavily against ALPA's entire claim.[9] We are not required to decide whether relief for failure of the Board to make a proper investigation could ever be granted in an action to which the Board is not a party. For the record shows that the Board performed its duty. True, no testimony was taken, as it was in the *WES* case, but the Board's manner of investigation was not only as good but better under the circumstances. As we are told by an affidavit of its Assistant Executive Secretary, it utilized pleadings, exhibits, and portions of the record already made in this action, which each of the three members reviewed. In addition it had the important benefit of its own intimate knowledge of the negotiations, derived from the participation of its representatives therein. ALPA had told us of no additional material facts it would have presented if the Board had

9. For reasons indicated above, we find no merit in ALPA's distinction of the *WES* case on the basis that there the suit followed whereas here it preceded certification.

given it a further opportunity; its complaint relates not so much to the adequacy of the information before the Board as to the Board's conclusion that no wrong had been done. We see no more basis for judicial interference with that conclusion than with the conclusion in the *Switchmen's* case that the New York Central's yardmen should vote on a system-wide basis. See 320 U. S. at 301, 305. Compare *General Committee* v. *Missouri-K.T.R. Co., supra,* 320 U. S. at 337; *Brotherhood of Railway and Steamship Clerks* v. *United Transport Service Employees,* 320 U. S. 715 (1943), *reversing per curiam* 137 F. 2d 817 (D. C. Cir. 1943); *UNA Chapter, Flight Engineers Int'l Ass'n* v. *National Mediation Board,* 294 F. 2d 905 (D. C. Cir. 1961), cert. denied, 368 U. S. 956 (1962); *Air Line Stewards Ass'n* v. *National Mediation Board,* 294 F. 2d 910 (D. C. Cir. 1961), cert. denied, 369 U. S. 810 (1962); *Flight Engineers Int'l Ass'n* v. *Eastern Air Lines, supra,* 311 F. 2d 745.

ALPA persistently reminds us how differently the case would have been treated if American had been a bus line subject to the National Labor Relations Act rather than an airline subject to the Railway Labor Act.[10] But the claim that the courts should do under the Railway Labor Act what Congress directed the NLRB to do under the National Labor Relations Act not only flies in the face of the difference in the language and scheme of the two statutes but ignores the diverse problems to which they were addressed. The Railway Labor Act constituted "legislation agreed upon between the railroads and the Brotherhoods and probably unique in having been frankly accepted as such by the President and Congress." "* * * [E]very stage in the evolution of this railroad labor code was progressively infused with the purpose of securing self-adjustment

10. It is, however, by no means clear that the National Labor Relations Board would have found *prima facie* merit in ALPA's complaint. See note 8 *supra*.

between the effectively organized railroads and the equally effective railroad unions * * *." *Elgin, J. & E. R. Co.* v. *Burley*, 325 U. S. 711, 752-53 (1945) (dissenting opinion of Mr. Justice Frankfurter). The special situation in the railroad industry, where strong unions and management had become used to dealing with each other, differed vitally from the host of problems at which the Wagner Act was aimed—businesses of every size and description, many with a history of strong anti-union bias and with ample opportunity for strong-arm tactics. It was thus natural that the Wagner Act should stress administrative adjudication whereas the earlier Railway Labor Act relied primarily on mediation. For the courts to require the Mediation Board to transform itself into an adjudicative and prosecutorial agency like the N.L.R.B. or to impose themselves upon it would distort the entire Congressional scheme. Moreover, Congress evidently considered the railroad and, later, the air transport industry to be so heavily charged with public interest as to make speed in the disposition of disputed questions of representation peculiarly vital. The thirty day period which Congress gave the Mediation Board to investigate and certify under § 2 Ninth is to be contrasted with the 475 days reported a few years ago to be the average time lapse between the filing of a charge and final decision of the NLRB, Organization and Procedure of the National Labor Relations Board. Report to the Senate Committee on Labor and Public Welfare, S. Doc. No. 81, 86th Cong. 2d Sess. (1960), pp. 1-2, and with the nearly six months which were here required for full hearings, briefing and decision by an effective judge in the District Court. Considerations such as these, and others marshalled in the opinions in the *Switchmen's* and *M.K.T.* cases, underlay the Court's conclusion that, as to the Railway Labor Act, "The inference is thus strong that Congress intended to go

no further in its use of the processes of adjudication and litigation than the express provisions of the Act indicate." 320 U. S. at 333; see also 320 U. S. at 302. "There was to be no dragging out of the controversy into other tribunals of law." 320 U. S. at 305. Contrast *Leedom* v. *Kyne*, 358 U. S. 184 (1958).

Appellants argue that if the District Court had "jurisdiction" when the suit was filed in March, before Allied even existed, this could not have been lost because the Mediation Board concluded in May that there was a representation dispute between ALPA and Allied and that the latter was not disqualified. But it had become apparent, long before Allied's application to the Mediation Board, that this action was subject to the vice that it sought orders from a federal court that might frustrate ultimate determination by the agency to which Congress gave exclusive responsibility; the action should have been dismissed as soon as this appeared. See *Division 14, Order of Railroad Telegraphers* v. *Leighty*, 298 F. 2d 17 (4 Cir.), cert. denied, 369 U. S. 885 (1962). The obstacle in a case like this is not truly lack of "jurisdiction" in the basic sense of a lack of power in the court "to determine whether it [the claim] was or was not well founded in law and in fact," *Lauritzen* v. *Larsen*, 345 U. S. 571, 575 (1953); rather, as Mr. Justice Jackson there went on to explain, "As frequently happens, a contention that there is some barrier to granting plaintiff's claim is cast in terms of an exception to jurisdiction of subject matter." Compare *Bell* v. *Hood*, 327 U. S. 678 (1946). Whether such a "barrier" is apparent the very instant that suit is brought or becomes so later, the court is bound to dismiss.[11]

Affirmed.

11. In view of this conclusion, it is unnecessary to consider appellees' contentions that injunctive relief was barred by §§7 and 8 of the Norris-LaGuardia Act, 29 U. S. C. §§107, 108.

Norris-La Guardia Act, 47 Stat. 70, 29 U. S. C. §§101, 102, 104, 105, 107, 108, 109, 113

Section 101. Injunction prohibited except as herein provided.—No court of the United States, as herein defined, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this Act [§101 et seq. of this title]; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this Act [§101 et seq. of this title]. (Mar. 23, 1932, c. 90, §1, 47 Stat. 70.)

Section 102. Public policy of United States.—In the interpretation of this Act [§101 et seq. of this title] and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are herein defined and limited, the public policy of the United States is hereby declared as follows:

Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other

mutual aid or protection; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the United States are hereby enacted. (Mar. 23, 1932, c. 90, §2, 47 Stat. 70.)

Section 104. Grounds for injunction limited.—No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 3 of this Act [§103 of this title];

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 3 of this Act [§103 of this title]. (Mar. 23, 1932, c. 90, 4, 47 Stat. 70.)

Section 106. Combinations or conspiracies.—No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doings in concert of the acts enumerated in section 4 of this Act [§104 of this title]. (Mar. 23, 1932, c. 90, §5, 47 Stat. 71.)

Section 107. Hearing on sworn complaint—Testimony—Findings—Notice—Irreparable injury—Period of restraint—Undertaking.—No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(b) That substantial and irreparable injury to complainant's property will follow;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) That complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property: Provided, however, That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a

hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

The undertaking herein mentioned shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages of which hearing complainant and surety shall have reasonable notice, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing herein contained shall deprive any party having claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity. (Mar. 23, 1932, c. 90, §7, 47 Stat. 71.)

Section 108. Person violating obligation not entitled to relief.—No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration. (Mar. 23, 1932, c. 90, §8, 47 Stat. 72.)

Section 109. Findings—Specific order.—No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided herein. (Mar. 23, 1932, c. 90, §9, 47 Stat. 72.)

Section 113. What constitutes labor dispute—Participants—Courts included.—When used in this Act, and for the purposes of this Act—

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(d) The term "court of the United States" means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia. (Mar. 23, 1932, c. 90, §13, 47 Stat. 73.)

Railway Labor Act, 45 U. S. C. §152 Ninth, 44 Stat. 577, as Amended

Ninth. Disputes as to identity of representatives—Designation by Mediation Board—Secret elections. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

Railway Labor Act, 45 U. S. C. §155, 44 Stat. 580, as Amended

155. Functions of Mediation Board.—First. Disputes within jurisdiction of Mediation Board. The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:

(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

In either event the said Board shall promptly put itself in communication with the parties to such controversy, and shall use its best efforts, by mediation, to bring them to agreement. If such efforts to bring about an amicable settlement through mediation shall be unsuccessful, the said Board shall at once endeavor as its final required action (except as provided in paragraph third of this section and in section 10 of this Act [§160 of this title]) to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this Act.

If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under section 10 of this Act [§160 of this title], no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose.

Railway Labor Act, 45 U. S. C. §155, 44 Stat. 580, as Amended

Second. Interpretation of agreement. In any case in which a controversy arises over the meaning or the application of any agreement reached through mediation under the provisions of this Act, either party to the said agreement, or both, may apply to the Mediation Board for an interpretation of the meaning or application of such agreement. The said Board shall upon receipt of such request notify the parties to the controversy, and after a hearing of both sides give its interpretation within thirty days.

Third. Duties of Board with respect to arbitration of dispute—Arbitrators—Acknowledgment of agreement—Notice to arbitrators—Reconvening of arbitrators—Filing contracts with Board—Custody of records and documents. The Mediation Board shall have the following duties with respect to the arbitration of disputes under section 7 of this Act [§157 of this title]:

(a) On failure of the arbitrators named by the parties to agree on the remaining arbitrator or arbitrators within the time set by section 7 of this Act [§157 of this title], it shall be the duty of the Mediation Board to name such remaining arbitrator or arbitrators. It shall be the duty of the Board in naming such arbitrator or arbitrators to appoint only those whom the Board shall deem wholly disinterested in the controversy to be arbitrated and impartial and without bias as between the parties to such arbitration. Should, however, the Board name an arbitrator or arbitrators not so disinterested and impartial, then, upon proper investigation and presentation of the facts, the Board shall promptly remove such arbitrator.

If an arbitrator named by the Mediation Board, in accordance with the provisions of this Act, shall be removed by such Board as provided by this Act, or if such an arbi-

trator refuses or is unable to serve, it shall be the duty of the Mediation Board, promptly, to select another arbitrator, in the same manner as provided in this Act for an original appointment by the Mediation Board.

(b) Any member of the Mediation Board is authorized to take the acknowledgment of an agreement to arbitrate under this Act. When so acknowledged, or when acknowledged by the parties before a notary public or the clerk of a district court or a court of appeals of the United States, such agreement to arbitrate shall be delivered to a member of said Board or transmitted to said Board, to be filed in its office.

(c) When an agreement to arbitrate has been filed with the Mediation Board, or with one of its members, as provided by this section, and when the said Board has been furnished the names of the arbitrators chosen by the parties to the controversy it shall be the duty of the Board to cause a notice in writing to be served upon said arbitrators, notifying them of their appointment, requesting them to meet promptly to name the remaining arbitrator or arbitrators necessary to complete the Board of Arbitration, and advising them of the period within which, as provided by the agreement to arbitrate, they are empowered to name such arbitrator or arbitrators.

(d) Either party to an arbitration desiring the reconvening of a board of arbitration to pass upon any controversy arising over the meaning or application of an award may so notify the Mediation Board in writing, stating in such notice the question or questions to be submitted to such reconvened Board. The Mediation Board shall thereupon promptly communicate with the members of the Board of Arbitration, or a subcommittee of such Board appointed

for such purpose pursuant to a provision in the agreement to arbitrate, and arrange for the reconvening of said Board of Arbitration or subcommittee, and shall notify the respective parties to the controversy of the time and place at which the Board, or the subcommittee, will meet for hearings upon the matters in controversy to be submitted to it. No evidence other than that contained in the record filed with the original award shall be received or considered by such reconvened Board or subcommittee, except such evidence as may be necessary to illustrate the interpretations suggested by the parties. If any member of the original Board is unable or unwilling to serve on such reconvened Board or subcommittee thereof, another arbitrator shall be named in the same manner and with the same powers and duties as such original arbitrator.

(e) Within sixty days after the approval of this Act [June 21, 1934] every carrier shall file with the Mediation Board a copy of each contract with its employees in effect on the 1st day of April 1934, covering rates of pay, rules, and working conditions. If no contract with any craft or class of its employees has been entered into, the carrier shall file with the Mediation Board a statement of that fact including also a statement of the rates of pay, rules, and working conditions applicable in dealing with such craft or class. When any new contract is executed or change is made in an existing contract with any class or craft of its employees covering rates of pay, rules, or working conditions, or in those rates of pay, rules, and working conditions of employees not covered by contract, the carrier shall file the same with the Mediation Board within thirty days after such new contract or change in existing contract has been executed or rates of pay, rules, and working conditions have been made effective.

Railway Labor Act, 45 U. S. C. §155, 44 Stat. 580, as Amended

(f) The Mediation Board shall be the custodian of all papers and documents heretofore filed with or transferred to the Board of Mediation bearing upon the settlement, adjustment, or determination of disputes between carriers and their employees or upon mediation or arbitration proceedings held under or pursuant to the provisions of any Act of Congress in respect thereto; and the President is authorized to designate a custodian of the records and property of the Board of Mediation until the transfer and delivery of such records to the Mediation Board and to require the transfer and delivery to the Mediation Board of any and all such papers and documents filed with it or in its possession. (May 20, 1926, c. 347, Title I, §5, 44 Stat. 580; June 21, 1934, c. 691, §5, 48 Stat. 1195; June 25, 1948, c. 646, §32, 62 Stat. 991; May 24, 1949, c. 139, §127, 63 Stat. 107.)

Railway Labor Act, 45 U. S. C. §§181, 183, 49 Stat. 1189

181. Application of sections 151, 152, 154-163 to carriers by air.—All of the provisions of Title I of this Act [§§151-163 of this title], except the provisions of section 3 thereof [§153 of this title], are extended to and shall cover every common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government, and every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner of rendition of his service. (May 20, 1926, c. 347, Title II, §201, as added Apr. 10, 1936, c. 166, 49 Stat. 1189.)

183. Disputes within jurisdiction of Mediation Board.—The parties or either party to a dispute between an employee or a group of employees and a carrier or carriers by air may invoke the services of the National Mediation Board and the jurisdiction of said Mediation Board is extended to any of the following cases:

(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

(b) Any other dispute not referable to an adjustment board, as hereinafter provided, and not adjusted in conference between the parties, or where conferences are refused.

The National Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

The services of the Mediation Board may be invoked in a case under this title [§§181-188 of this title] in the same manner and to the same extent as are the disputes covered by section 5 of Title I of this Act [§155 of this title]. (May 20, 1926, c. 347, Title II, §203, as added Apr. 10, 1936, c. 166, 49 Stat. 1189.)

Federal Rules of Civil Procedure

Rule 52(a)

Findings by the court—(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b).

Rule 65(d)

(d) Form and scope of injunction or restraining order. Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

[redacted]

In the

Supreme Court of the United States

OCTOBER TERM, 1968

No. [redacted]

NICHOLAS J. O'CONNELL, JR., *etc. et al.*,

Petitioners,

v.

JOSEPH V. MANNING, *etc. et al.*,

Respondents.

No. [redacted]

AMERICAN AIRLINES, INC.,

Petitioner,

v.

JOSEPH V. MANNING, *etc. et al.*,

Respondents.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

ARTHUR W. SCHWARTZ,
[redacted] Fifth Avenue,
New York, New York 10017,
Attorney for Respondents,
212 MU 2-0261.

WARREN N. KAUFMAN,
Of Counsel.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 454

NICHOLAS J. O'CONNELL, JR., *etc., et al.*,

Petitioners,

v.

JOSEPH V. MANNING, *etc., et al.*,

Respondents.

No. 455

AMERICAN AIRLINES, INC.,

Petitioner,

v.

JOSEPH V. MANNING, *etc., et al.*,

Respondents.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

Respondents ("Engineers" or the "Chapter") hereby oppose the petitions of Nicholas J. O'Connell, Jr., *et al.*

("Pilots") in No. 454 and American Airlines, Inc. ("Company") in No. 455.*

Statement of the Case

A statement of the case sufficient for consideration of these petitions is incorporated in the points of the argument. For a comprehensive statement of this case and the ALPA case, which were tried together, the Court is respectfully referred to the opinion of the District Court (R. Vol. III, 1b, *ff.*).

Argument

1. This Court Denied Certiorari to Review the Affirmance in a Case Tried Together with This Case and Involving a Like Determination by the District Court.

In the District Court the Engineers were the intervenors in an action which plaintiff Air Line Pilots Association ("ALPA") brought to compel the Company to recognize it as the bargaining representative of the pilots in its employ. What precipitated the litigation was the refusal of the Pilots, then constituting the ALPA negotiating committee, to comply with the "crew complement" policy of the International in the negotiations under way with the Company. Over ALPA's objections, the Company continued to bargain with the Pilots; as would appear only later, the Pilots were well on the way to establishing an independent union.

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* The Engineers, referred to in the Pilots' petition as the "FEIA," are the president of the American Airlines Chapter of the Flight Engineers' International Association and the Chapter itself; however, the International was party neither to the Chapter's agreement with the Company nor to any of the events underlying this dispute.

Since the "crew complement" negotiations had been tripartite and merger of the Chapter with ALPA had been contemplated, the Chapter intervened, seeking only a declaration of the rights of the parties. Thereafter, the Chapter was constrained to seek an injunction to compel the Company to recognize it as the bargaining representative of the flight engineers. For though no other organization represented or claimed to represent the flight engineers, the Company had become adamant in its position that the Chapter, having participated in tripartite "crew complement" negotiations, had thereby surrendered its representation rights with respect to wages and other working conditions of the flight engineers to a "joint committee" controlled by the Pilots. The Company resorted to this tactic because the Chapter, after the rift within ALPA, had resisted committing itself to merger with a pilot labor organization then unknown and unknowable, the legal propriety of which was the core of the ALPA complaint.

In the District Court, where ALPA's and the Chapter's refusal-to-bargain complaints were tried together, the Company's principal defense was that both cases involved a representation question within the exclusive jurisdiction of the National Mediation Board. In the Court of Appeals as well, that was the Company's principal contention in both cases.

The District Court found there was a substantial question as to the identity of the pilots' bargaining representative and denied ALPA's motion for a preliminary injunction; it dismissed ALPA's complaint for lack of jurisdiction and severed that case from the Chapter's (R. Vol. III, 52b;

57b). The Second Circuit affirmed, and this Court denied certiorari. *Ruby* v. *American Airlines, Inc.*, 227 F. Supp. 674 (S. D. N. Y.), *aff'd*, 323 F. 2d 248 (2d Cir. 1963), *cert. denied*, 376 U. S. 913 (1964).

At the same time the District Court found there was *no* representation question concerning the flight engineers and granted the Chapter's motion for a preliminary injunction (R. Vol. III, 55b). The Second Circuit has affirmed and denied the petitions for a rehearing, one judge dissenting; the petitions for rehearing *en banc* were also denied, without dissent (Jt. App. 44-47).

If there was no compelling reason to review the affirmance of the District Court's determination in the ALPA case, there would appear to be no compelling reason to review the affirmance in this case of a like determination by the same District Court rendered in the same opinion after the same trial.

2. The Company's Lofty Protestations Notwithstanding, This Case Turns Entirely on Its Own Facts and Should Not Be Reviewed by This Court.

The first reason the Company advances for granting certiorari is more formal than substantial. The Company asserts that "the proper functioning of appellate review in the federal courts" is at issue (Pet. 12), but what the reason comes to is that the majority in the Court of Appeals improperly characterized the following statement from the 55-page opinion of the District Court as a finding of fact rather than a conclusion of law:

> From at least as early as January 31, 1963 to July 11, 1963, the Company refused to bargain collectively with the Chapter, and until at least as late

> as March 15, 1963 the Company instead bargained collectively in respect of flight engineers only with a committee, of which O'Connell was Chairman, and which the Company claimed represented the flight engineers. (Jt. App. 3)

The statement quoted cannot be a finding of fact, the Company contends, because (a) it was not "separately stated" to be such, in violation of Fed. R. Civ. P. 52(a), thereby throwing the Court of Appeals into confusion, and because (b) the Company's refusal to bargain took some form other than a refusal to meet, thereby precluding any other such fact-finding!

However, Fed. R. Civ. P. 52(a) expressly permits, "if an opinion or memorandum of decision is filed," that findings and conclusions "appear therein"; and it is well-settled that wherever in the opinion a finding (or conclusion) appears or however it is labeled, the Rule is reasonably complied with if the opinion affords an adequate understanding of the basis of decision.*

Furthermore, it is quite clear that the majority viewed the quoted statement as they would any "traditional conclusory statements of fact based upon a distillation of the proofs and the making of essential inferences of fact" (Jt. App. 5). To the majority it was clearly the "critical find-

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* *Elam* v. *United States*, 250 F. 2d 582, 583 (6th Cir.), *cert. denied*, 358 U. S. 848 (1958); *Stone* v. *Farnell*, 239 F. 2d 750, 755 (9th Cir. 1957); *Food Fair Stores, Inc.* v. *Square Deal Mkt. Co.*, 206 F. 2d 482, 484 (D. C. Cir. 1953), *cert. denied*, 346 U. S. 937 (1954); *Central Ry. Signal Co.* v. *Longden*, 194 F. 2d 310, 320 (7th Cir. 1952); *Benrose Fabrics Corp.* v. *Rosenstein*, 183 F. 2d 355, 357 (7th Cir. 1950); *Burnham Chemical Co.* v. *Borax Consolidated, Ltd.*, 170 F. 2d 569, 574 (9th Cir. 1948), *cert. denied*, 336 U. S. 924 (1949).

ing," but hardly the only finding (Jt. App. 3). The majority next proceeded

> . . . . to a chronological statement of the course of events supplemented by comments and discussion, all for the purpose of demonstrating that the finding quoted above is supported by substantial evidence. In the process we think it will clearly appear that the proofs overwhelmingly support the finding . . . (Jt. App. 5)

It was immaterial to the majority, as it was to the District Court, *and* as it was to the Engineers, whether the Company bargained with the Engineers "across one table" jointly with the Pilots or "across two tables" (Pet. 2-3). The crucial question, rather, was whether the Company discharged its duty effectively to recognize the Chapter as the bargaining representative of the flight engineers with respect to flight engineer wages and working conditions, whatever form the bargaining took. The inescapable answer was that the Company had not. The Company refused even to talk to the Engineers directly at the "joint" meetings (Jt. App. 13) and refused even to meet with them separately other than in "bull sessions" at which it would not "talk wages" (Jt. App. 14). Such conduct frustrated, rather than facilitated, the recommendations of the Feinsinger Commission that there be a "voluntary merger on fair and honorable terms," affording the flight engineers "a full measure of legally enforceable security" (R. Vol. IV, 2d, 3d). That was and remains the Engineers' position.

As for the Company's principal defense—that the Chapter had definitively relinquished its representation rights to the Pilot-controlled "joint committee"—the District Court

stated, "The difficulty is that the facts do not support such contention" (R. Vol. III, 53b). In the Court of Appeals, both the majority and the dissenting judge agreed that the position was "insupportable" (Jt. App. 16). The dissenting judge stated even that "this claim was specious and its making ill-advised"; yet he treated it as no more than an annoying argument of counsel (Jt. App. 26 n. 2)! However, as detailed in the majority opinion (Jt. App. 12-14), the Company took that position not only in this litigation, but in the negotiations, in which Company counsel, an employee of the Company, participated actively (Jt. App. 14).

Moreover, as the District Court further found, the Company not only refused to bargain with the Engineers, but, even after proceedings had commenced in court, "instead bargained" with the Pilots "in respect of flight engineers," concluding "an overall agreement" which covered "both pilots and engineers" (R. Vol. III, 40b-41b, 53b).

It is also quite clear that the majority gave "due regard . . . to the opportunity of the trial court to judge of the credibility of the witneses," within the letter, and spirit, of Fed. R. Civ. P. 52(a)—a prescription especially compelling in this case, which took weeks to try and produced over 3,000 pages of transcript and approximately 250 exhibits (Jt. App. 3, 5, 11, 15, 16).

In view of the majority's discussion of the facts and of the law, can it be reasonably supposed that the disagreement within the Court of Appeals was attributable, as the Company contends, to the District Court's failure to label the statement in issue? Can it be reasonably supposed that,

whatever the label, the majority would have held otherwise on this record?

Far from raising an important question of federal law which this Court should settle, the Company's petition seeks review of a decision which turns entirely on its own facts.

3. In Enforcing the Company's Duty to Bargain under the Railway Labor Act, the Courts Below Applied Well-Settled Law.

The next reason the Company advances for granting the writ is that the National Mediation Board, not the District Court, has "exclusive or primary" jurisdiction to determine whether or not the Company bargained properly, since it was bargaining "under the Board's auspices" (Pet. 3). The Company adds that but for the Chapter's resort to litigation, bargaining would have flourished, whereas "in the heat of litigation, bargaining soon withered" (Pet. 14).

The argument is utterly spurious. It flies in the face of the facts. The Company had taken its "joint committee" stand at least as early as January 31, 1963; persisted in that position throughout February 1963, declining to deal directly with the Engineers at the "joint meetings"; and refused to meet with the Engineers separately in March 1963 except in "bull sessions" where it would not "talk wages" even after the exchange of Section 6 notices (Jt. App. 11-14).

Even assuming, as the dissenting judge did (Jt. App. 33), that the Chapter had misconceived the Company's conduct and had been rash in running to court, its rashness was hardly irreversible. The Company could have commenced bargaining with the Engineers, or the Company

could have ceased bargaining with the Pilots. Instead, on March 15, 1963, *before* the Engineers petitioned for an injunction, the Company confirmed the Engineers' fears and compounded its refusal to bargain by concluding with the *Pilots* a collective bargaining agreement covering the *flight engineers* "as to compensation and everything else" (R. Vol. III, 41b). "The heat of litigation" only kindled *that* bargaining. "The cry 'they sued us' has a hollow ring" (Jt. App. 19). Rather, this was "a power play from first to last" (Jt. App. 20).

Moreover, the Company and the Engineers were *not* in mediation. It was the Pilots, not the Engineers, who had reached an impasse in negotiating the terms of their basic agreement and had been in mediation (R. Vol. III, 10b, 14b). It was not until February 28, 1963, that the Engineers and the Company exchanged Section 6 notices affecting their basic agreement (R. Vol. III, 39b). So far as concerned the Engineers, the NMB's function had been confined to resolving the "crew complement" issue (R. Vol. III, 19b). The District Court was not dazzled by this NMB backdrop.

It is a fundamental feature of the Railway Labor Act that invocation of the NMB is the second step, not the first, in the settlement of a "major" dispute—that the primary duty of the parties is to bargain. *Elgin, J. & E. Ry.* v. *Burley*, 325 U. S. 711, 724-725 (1945). "It was that specific command for the disobedience of which this Court held in the *Virginian Ry. Co.* case (300 U. S. 515) that courts would provide a remedy." *General Committee* v. *Missouri-K.-T. R. R.*, 320 U. S. 323, 331 (1943).

This was neither a jurisdictional dispute, as in the M-K-T case, nor a representation dispute, as in the ALPA case.* The Courts below did no more, and no less, than apply settled law under the Railway Labor Act.

4. The Norris-La Guardia Act Is Inapplicable; Moreover, Petitioners' Arguments Based upon That Act Are Obviated by the Findings of Fact.

Both petitioners advance reasons for granting the writ based upon the Norris-La Guardia Act.

It is answer enough to the Company's argument that the Norris-La Guardia Act is inapplicable. *Virginian Ry.* v. *System Federation No. 40,* 300 U. S. 515 (1937). In the words of the District Court, that conclusion follows from "the facts as found," which are "exactly the same as in the *Virginian Ry.* case" (R. Vol. III, 52b, 53b): the carrier refused to recognize the bargaining representative certified by the NMB; instead, the carrier attempted to negotiate a collective bargaining agreement with another organization; the carrier was enjoined, in a "major" dispute, from negotiating such an agreement with any organization other

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* The Chapter, unlike ALPA, was certified by the NMB and, unlike ALPA, was and is not challenged by a rival representative (R. Vol. III, 52b-53b). The Company's "pending" petition to the NMB was filed May 16, 1963 (not "1964"; Pet. 7) for leave to intervene in the matter of the application of the Pilots' new union, Allied Pilots Association, for a certificate covering only pilots and co-pilots (R. Vol. III, 60b-70b). Allied has long been certified, but the Company's petition has not yet been granted. That petition, which favors the determination of a single craft or class including pilots, co-pilots and flight engineers, flouts the Feinsinger Commission recommendations (R. Vol. IV, 3d), which the Company publicly accepted (R. Vol. III, 10b; Vol. IV, 10d). Contrary to the statement in the Pilots' petition (Pet. 13), the Engineers did *not* intervene.

than the certified representative. For more than a quarter-century, *Virginian Ry.* has been consistently cited for the proposition that the duty to bargain and other duties under the Railway Labor Act are "binding and their breach redressable in the federal courts." *International Ass'n of Machinists* v. *Central Airlines, Inc.*, 372 U. S. 682, 690 (1963).

An equally dispositive answer is the District Court's alternative holding—that "in any event and on this record" the Engineers in fact satisfied the requirements of Sections 7 and 8 of the Norris-LaGuardia Act (29 U. S. C. §§107, 108) (R. Vol. III, 54b-55b).

Likewise, the short answer to the Pilots' argument is that its underlying assumption—that the Pilots were not found guilty of any wrongdoing—is refuted by the District Court's findings. The argument is based largely on the fact that the Pilots never purported to represent the flight engineers (Pet. 7). But that fact only underscores their wrongdoing, for the District Court found (1) that "despite the withdrawal of the engineers from the joint sessions," the Pilots "continued their negotiations" with the Company "for an overall agreement," reaching and reducing to writing a "basic working agreement" which "covered both pilots and engineers, as to compensation and everything else" and "was designed to be executed by one bargaining representative for all 'pilots', including engineers," and (2) that neither this agreement nor a Company letter to the Pilots' chairman confirming the "rates" of pay and retirement benefits for engineers" already negotiated and offering to negotiate "retroactive pay for engineers" with the "Joint Committee," was ever shown to the Engineers

(R. Vol. III, 40b-41b, 42b). Thus the Pilots, neither representing nor claiming to represent the flight engineers, knowingly enabled the Company to consummate its refusal to bargain, in violation of the "affirmative duty to treat only with the true representative, and . . . the negative duty to treat with no other." *Virginian Ry.* v. *System Federation No. 40, supra* at 300 U. S. 548.

It was the negotiation of that agreement, which came to light only during the trial, that led to the addition of the Pilots as parties defendant *and* to the issuance of a temporary restraining order against their signing that agreement or publicizing it at pilot council meetings to which flight engineers had been invited (R. Vol. IV, 1d). For there was uncontroverted testimony, by the Company and by the Pilots' chairman, that the Company delivered over 100 copies of that agreement to the Pilots, whom the Company knew would call and hold council meetings so as to acquaint not only the pilots with it, but also the flight engineers.*

It was thus appropriate to restrain and enjoin the Pilots, once they were made parties, as active participants in the wrongdoing, the "power play," whatever their motives. And it is apparent that the District Court's order realistically reflects the circumstances of this case and reasonably restrains only the specific conduct in which the Pilots engaged. "Nothing in this order is intended to limit any rights which any party may have under the Railway Labor Act" (Jt. App. 52).

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* This testimony appears at pages 349-350, 382-384 and 2830-2831 of the trial transcript, which is part of the record on appeal in the Second Circuit. 2d Cir. R. 11 (a).

Conclusion

For the foregoing reasons, the petitions should be denied.

Dated: New York, New York,
October 1, 1964.

Respectfully submitted,

ASHER W. SCHWARTZ,
Attorney for Respondents.

WALTER N. KAUFMAN,
Of Counsel.

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Supreme Court of the United States

October Term, 1964

No. 454

NICHOLAS J. O'CONNELL, JR., individually and as Chairman of the Master Executive Council of the pilots in the service of AMERICAN AIRLINES, INC., and the Negotiating Committee of said pilots, consisting of RICHARD LYONS, ROBERT T. GUBA, JOSEPH GARVEY, PAUL ATKINS and NICHOLAS J. O'CONNELL, JR., ex officio,

Petitioners,

against

JOSEPH V. MANNING, as President of the AMERICAN AIRLINES CHAPTER, FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, AFL-CIO, and AMERICAN AIRLINES CHAPTER, FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, AFL-CIO, an unincorporated association,

Respondents.

REPLY BRIEF FOR PETITIONERS

MARTIN C. SEHAM, Esq.
Attorney for Petitioners
Nicholas J. O'Connell, Jr., et al.
205 West 34th Street
New York, New York 10001
(212) LO 5-4424

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Respondents.

REPLY BRIEF FOR PETITIONERS

This reply is submitted on behalf of petitioners Nicholas J. O'Connell, Jr., *et al.* (representing the American Airlines pilot group) in response to the brief of the respondents in the above-captioned proceeding.

For the following reasons, we believe that the respondents' brief confirms the necessity of granting the petition.

1. Respondents concede (brief, pp. 10, 11, 12), as we contended in our petition, that the pilot group did not claim

to represent the flight engineers. Yet, the first ordering paragraph of the District Court's order (Jt. App. 51) enjoins precisely this conduct.

2. The District Court did not, as respondents state (brief, p. 11), find "the requirements of Sections 7 and 8 of the Norris-LaGuardia Act" satisfied, and we invite the Court's attention to the pages cited by the respondents, Record Volume III, 54b-55b. *At best* the District Court found that the flight engineers fulfilled the "settlement" requirements under Section 8 but certainly made *none* of the findings required by Section 7.

3. In the absence of any findings of wrongdoing by the lower courts, respondents rely on passing references to the course of negotiations after the flight engineers left the Joint Committee sessions. The facts are, even as they are shown by the respondents' brief, that the pilots continued bargaining on the basis of documents and concessions that had been won over the past months in concert with the flight engineers; these vitally affected pilots and the American pilot group was certainly not required to junk these gains when the flight engineers withdrew. The "agreements" of which the respondents complain insofar as they affected flight engineers were never signed or implemented, and there is no indication or finding that pilots intended to do so without the agreement of the flight engineer representatives. This had been the procedure with respect to the crew complement agreement of December 1, 1964 (R. 19b-20b). As the District Court points out, the agreement which the respondents discuss "was designed to be executed by Alpa, by the Chapter [respondents], and by the Company" (R. 41b).

Conclusion

By far, the largest portion of the respondents' brief replies to a separate petition (No. 455) by American Airlines. The pilots' petition and the Company's present different, serious and substantial questions. Certainly, respondents must have originally predicated their actions for injunctive relief against the carrier and the pilots' union on different grounds and different theories, for while the Railway Labor Act imposes certain duties of bargaining upon the carrier, it recognizes a *competition* of interest as between labor organizations. Yet, in order to sustain the decision against the pilots, the respondents have sought to confuse the responsibilities and duties of an employer with those of another union.

The respondents have not met with reason or authority a single point—including the vital Norris-LaGuardia jurisdictional question—raised by the pilots' petition. By involving the pilots in their litigious struggle with the Company, the respondents apparently seek to carve out, through an injunctive order, some future tactical advantage in the uncertain bargaining future that lies ahead of all unions in the airline industry. We can find no other reason for the flight engineers' persistent pursuit of judicial restrictions upon the pilots' union's freedom of action. We do not believe that the respondents have shown that the order of the District Court is rooted in past conduct or present necessity; it is supported by neither equity nor reason and flies directly in the face of the most plainly stated legislative requirements. Perhaps the most important consideration for this Court is the prospect that

such seriously misconceived decisions will breed increasing disorder in the application of the Norris-LaGuardia Act, the Railway Labor Act and the Federal Rules of Civil Procedure to the field of labor law litigation.

For the foregoing reasons, it is respectfully submitted that the petition for certiorari should be granted.

Respectfully submitted,

MARTIN C. SEHAM, Esq.
Attorney for Petitioners
Nicholas J. O'Connell, Jr., et al.
205 West 34th Street
New York, New York 10001
(212) LO 5-4424

October 8, 1964

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No. 455

AMERICAN AIRLINES, INC.,

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JOSEPH V. MANNING, as President of the AMERICAN AIRLINES CHAPTER, FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, AFL-CIO, and AMERICAN AIRLINES CHAPTER, FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, AFL-CIO, an unincorporated association,

Respondents.

SUPPLEMENTAL JOINT APPENDIX

MARTIN C. SEHAM
Attorney for Petitioners
Nicholas J. O'Connell, Jr., et al.
205 West 34th Street
New York, New York 10001
212 LO 5-4424

ARTHUR M. WISEHART
Attorney for Petitioner
American Airlines, Inc.
633 Third Avenue
New York, New York 10017
212 TN 7-1234

Appendix A

Letter to A. P. A. and F. E. I. A.

Mr. Nicholas J. O'Connell
President
Allied Pilots Association
405 Lexington Avenue
New York, New York 10017

Mr. William A. Gill, Jr.
President
Flight Engineers' International Association
100 Indiana Avenue, N.W.
Washington, D. C. 20001

Gentlemen:

The following statement is made subject to and effective with the signing of a formal and final agreement by and between the Carrier and the two labor organizations mentioned below, respectively.

The terms and provisions of the Tripartite Agreement dated October 17, 1964, between the Allied Pilots Association, the Flight Engineers' International Association, AAL Chapter, and American Airlines, pertaining to the performance of the flight engineering function on American Airlines, were negotiated and subsequently agreed upon in mediation pursuant to Section 5, First, of the Railway Labor Act.

Those provisions of the said Tripartite Agreement relating to bargaining and the performance of the representation function terminated a long-standing dispute of substantial impact on the airline industry and the public in a manner considered equitable, reasonable, and in full consideration of the respective contentions of the respective parties.

Appendix A

The execution and implementation of the Tripartite Agreement is not meant to and shall not cause either labor organization to suffer an increased risk of loss of representation rights.

Sincerely yours,

W. Willard Wirtz
Secretary, U. S. Department of Labor

Date: March 8, 1965

Howard G. Gamser
Chairman, National Mediation Board

Date: March 10, 1965

Appendix B

Tripartite Agreement

1. Pursuant to the certification from the National Mediation Board, the Company and the Allied Pilots Association recognize the AAL Chapter, FEIA, AFL-CIO, as the duly designated exclusive bargaining representative of the third crew members listed on the American Airlines Flight Engineer System Seniority List set forth in Appendix A attached hereto who are assigned to and serve at the third crew member position on all aircraft operated by the Company with a minimum cockpit flight crew of three or more (hereinafter referred to as "Flight Engineers"). The Flight Engineers will be covered by the Basic Agreement between the Chapter and the Company.

2. The Company and the AAL Chapter, FEIA, AFL-CIO, recognize the Allied Pilots Association, as the duly designated exclusive bargaining representative of all third crew members who are assigned to and serve at the third crew member position on all aircraft operated by the Company with a minimum cockpit flight crew of three or more other than the third crew members referred to above as Flight Engineers. The Flight Officers will be covered by the Basic Agreement between the Allied Pilots Association and the Company.

3. All cockpit crew members hired by the Company on or after July 1, 1964, shall meet the Company's employment requirements for the hiring of Pilots, and shall be represented by the Allied Pilots Association and covered by the Basic Agreement between the Allied Pilots Association and the Company.

4. No party to this Agreement shall seek in any manner to remove from the Federal Aviation Regulations the

requirement that a Flight Engineer certificate be possessed by one cockpit flight crew member in turbojet or turboprop aircraft, nor add to the Federal Aviation Regulations any requirement that will jeopardize the job security of any Flight Engineer, but the parties reserve the right to express their individual views to the Federal Aviation Agency with respect to proposed rule-making aimed at substituting criteria other than gross weight as the basis for determining crew requirements for aircraft to be certificated in the future.

5. (a) Each Flight Engineer shall be deemed qualified for the third crew member position as long as he satisfies the minimum government requirements for such position. Should governmental regulations change to impose additional requirements for the third crew member position on any aircraft, the necessary additional training therefor will be provided, on Company time and at Company expense, for the Flight Engineer, if such position remains primarily a flight engineering function, as it is generally known. If a change in qualifications by any governmental agency causes or threatens to cause Flight Engineers to lose employment as third crew members, the consequences of such change to such Flight Engineers shall be equitably resolved in accordance with procedures set forth in Section 8 of this Agreement.

(b) Flight Engineers shall accept such additional training relating to the proper performance of the third crew member function as the Company may require, on Company time and at Company expense.

6. Each Flight Engineer shall have priority and seniority over all Pilots (including Flight Officers) for the third crew member position on any type of aircraft oper-

ated by the Company for which such Flight Engineer meets the minimum government requirements for the third crew member position pursuant to Section 5 above. No Flight Engineer shall be furloughed or continued on forlough while any Pilot (including Flight Officer) is serving as third crew member on any type of aircraft operated by the Company for which such Flight Engineer meets the minimum government requirements for the third crew member position. Flight Engineers shall be eligible for the rights herein provided until retirement, resignation, severance, or discharge for cause and, if furlough and recall of Flight Engineers should become necessary at any time after the execution of this Agreement, the rights herein shall survive such furlough and recall. If a Flight Engineer does not chose to exercise his seniority to assert such priority in any particular instance, he may not subsequently invoke this Section to assert priority as to the particular instance in which he did not exercise his seniority.

7. The agreement to guarantee Flight Engineers the prior rights as defined in Section 6 above shall be made directly with and on behalf of each individual Flight Engineer because of his past service with the Company, to be legally enforceable by him pursuant to the provisions of Section 8 hereof, and shall be in the form attached as Appendix B to the original executed copy hereof, and shall be given to each Flight Engineer.

8. Any dispute, claim or grievance arising out of or relating to the interpretation or application of this Agreement shall be resolved pursuant to Section 204 of the Railway Labor Act as follows:

(a) Any party to or person bound by this Agreement may serve a written notice of protest, within thirty days

after the date of becoming aware of the action protested, on each member of the Tripartite Board of Adjustment hereinafter established.

(b) The Tripartite Board of Adjustment shall consist of the President of the Allied Pilots Association, the President of the AAL Chapter, Flight Engineers International Association, and the Vice President-Flight of the Company. An alternate designated by any one of the foregoing Board members may serve in his stead. A unanimous decision by the three-member Board will be final and binding on all parties. If the decision is not unanimous, the matter may be appealed to the neutral referee as provided below.

(c) If the Tripartite Board of Adjustment fails to render a unanimous decision within thirty days after receipt of the protest, or a vacancy exists on the Board, the petitioner may cause the matter to be referred to Harry H. Platt, Esq., as neutral referee or, in the event of his inability to serve, Peter M. Kelliher, Esq., as his alternate, by serving a notice thereof on each of the Board members and the neutral referee within forty days after the protest was originally received by the Board. The decision of the neutral referee shall constitute the determination of the Tripartite Board of Adjustment. The other members of the Tripartite Board of Adjustment shall advise the neutral referee, and shall provide the neutral referee with information and assistance as required by him, but they shall not vote on the decision. The absence of one or more such Board members, other than the neutral referee, shall in no way affect the validity or enforceability of the decision of the neutral referee. If the neutral referee is unable to serve, his successor shall be chosen pursuant to the Voluntary Labor Arbitration Rules of the American Arbitration Association.

(d) The decision of the neutral referee shall be in writing and signed, and shall be deemed an arbitration award which is final and binding on the parties.

(e) The expenses of the proceedings, including the compensation of the neutral referee, shall be shared equally by each of the parties to this Agreement, and the proceedings shall be conducted pursuant to procedures established by the neutral referee.

(f) The Tripartite Board of Adjustment shall not have jurisdiction to interpret the working agreements of the parties. Any dispute arising under this Agreement which requires interpretation of the working agreements shall be promptly referred by the neutral referee to the appropriate System Board of Adjustment, and the System Board of Adjustment shall issue its interpretation within sixty days after the matter has been referred to it, or as soon thereafter as possible. Thereafter, on the basis of such interpretation by the System Board of Adjustment, the Tripartite Board of Adjustment shall take whatever, if any, further action may be necessary to give effect to the terms of this Tripartite Agreement.

(g) The procedures prescribed in this Section 8 shall be exclusive and any claims not processed in accordance with them shall be deemed to be waived.

9. (a) After each new Pilot Agreement is settled in the future, upon the same effective dates, changes in the rules and working conditions applicable to Flight Officers thereunder shall also become applicable to Flight Engineers, as appropriate, except that (i) Flight Engineer training will be governed exclusively by Section 5 of this Tripartite Agreement, (ii) Flight Engineers shall not acquire or accrue seniority as Pilots, (iii) Flight Engineers

shall not be covered thereby in the American Airlines Pilot Retirement Benefit Plan but shall be covered in the American Airlines Retirement Benefit Plan for Flight Engineers effective January 1, 1965, and the American Airlines Supplemental Variable Annuity Plan effective January 1, 1965,* (iv) the allocation of Flight Engineer cockpit duties shall be determined by the Company, (v) there shall be a Flight Engineer grievance procedure and System Board of Adjustment, as set forth in Appendix C attached hereto and a part hereof and (vi) Appendix D attached hereto and a part hereof is a memorandum agreement between the AAL Chapter, FEIA, and the Allied Pilots Association with respect to payments for services rendered.

(b) The Flight Engineers shall not engage in any strikes, work stoppages, slowdowns, curtailment of work, or other concerted action, while this Agreement remains in effect, and any disputes, if not otherwise resolved, shall be submitted by either party to the Tripartite Board of Adjustment for a final and binding determination pursuant to Section 8 hereof.

10. Effective January 1, 1965, the rates of pay for Flight Engineers shall be based on 90 percent of present copilot pay. On and after January 1, 1966, the Flight Engineers will receive (i) the rates of pay for Flight Officers or (ii) rates of pay based on 90 percent of copilot pay, whichever is higher. Flight Engineer rate changes shall take place as of the same effective dates in each new future Pilot agreement covering rates of pay, except that the January 1, 1965 Flight Engineer rates shall remain unchanged through December 31, 1965.

* The AAL Chapter FEIA and the Company may make changes in retirement benefits applicable to Flight Engineers by mutual consent, but discussions of such changes shall not be deemed an exception to the waiver provisions of Section 12(a) of this Agreement.

Appendix B

11. The provisions of this Agreement shall prevail over inconsistent provisions in any other agreement and neither the Tripartite Board nor any Adjustment Board shall have jurisdiction to change the provisions of this Agreement. The terms of this Agreement shall be for the benefit of and binding upon the parties, their successors or assigns, and the individual Flight Engineers and Pilots now or in the future employed by the Company.

12. (a) This Agreement shall remain in effect so long as any Flight Engineer remains in the active employ of the Company as a flight crew member or retains recall rights. The parties hereto, as well as the persons bound hereby, irrevocably waive the right to serve any Section 6 notice, under the Railway Labor Act, of an intended change which, if adopted, would have the effect of modifying provisions contained in this Agreement or otherwise to require bargaining as to such provisions, provided, however, (i) that this Agreement may be changed by unanimous agreement among the parties and a majority of the Flight Engineers then performing services as such, and (ii) that Appendix C and Appendix D hereof may be changed by mutual agreement of the parties.

(b) This Agreement is a permanent resolution of a long-standing problem. Neither the Company, the Allied Pilots Association, the AAL Chapter, Flight Engineers International Association, AFL-CIO, their successors, assigns or affiliates, nor any individual Flight Engineer or Pilot (including Flight Officers), now or in the future employed by the Company, shall challenge, contest, or question the legality, validity, or enforceability of this Agreement, or any provision thereof, in any judicial, administrative, or other proceeding, and each of the parties shall participate in defending the legality, validity, and enforceability of

this Agreement in any judicial, administrative, or other proceeding involving any of its provisions.

IN WITNESS WHEREOF, the parties have set forth their signatures hereunto as of this 11th day of December, 1964.

For the AAL Chapter, Flight Engineers International Association, AFL-CIO.

/s/ Joseph D. Manning

For the Allied Pilots Association

/s/ Nicholas J. O'Connell, Jr.

For American Airlines, Inc.

/s/ A. Di Pasquale

Appendix A Annexed to Agreement

ORIGINAL CONTAINS LIST OF NAMES WHICH IS OMITTED HEREIN

Appendix B Annexed to Agreement

December 11, 1964

Dear Flight Engineer:

In consideration of your past services with American Airlines, and of your acceptance of the rights and obligations set forth in the Tripartite Agreement annexed hereto, the undersigned parties to that Agreement agree and represent to you that the terms and conditions thereof are binding upon them, their successors and assigns, are made with you and for your benefit as an individual Flight Engineer in the employ of American Airlines, and will remain in effect so long as you remain in the active employ of American Airlines as a Flight Crew Member or retain recall rights.

In the event that you have any dispute, claim or grievance arising out of or relating to the interpretation or application of the aforesaid Agreement, you are entitled to have such dispute, claim or grievance resolved by a written protest filed within thirty days after the date you became aware of the action protested. Your dispute, claim or grievance will be processed in accordance with the terms and conditions prescribed in Section 8 of the aforesaid Agreement.

The aforesaid Agreement is subject to change and the provisions thereof to modification only by the unanimous agreement of the undersigned parties and a majority of the Flight Engineers then in the active employ of the

Appendix B Annexed to Agreement

Company as a flight crew member or who retain recall rights.

Very truly yours,

AMERICAN AIRLINES, INC.

By:

ALLIED PILOTS ASSOCIATION

By:

AMERICAN AIRLINES CHAPTER,
FLIGHT ENGINEERS' INTERNATIONAL
ASSOCIATION, AFL-CIO

By:

Appendix C Annexed to Agreement

There is no difference between the parties with reference to the procedure and handling of flight engineer grievances below the System Board level. The parties agree to the following subsequent procedure applicable to flight engineer grievances:

(a) The flight engineers grievances in the categories hereinafter set forth shall be processed through the Flight Engineers System Board of Adjustment in the usual way:

(i) Grievances and cmf shr cmfw vbg c cmfwy ity of flight engineers among themselves insofar as such seniority may derive from the formulation of the flight engineers' seniority roster.

(ii) Grievances arising out of the change from 80% of scheduled time for bidding purposes to 100% of scheduled time.

(iii) Grievances arising out of the conversion of the flight engineers' sick leave hours to sick leave days.

(iv) Grievances arising out of the agency shop and dues and assessment check-off provisions in the Flight Engineers' agreement.

(v) Grievances arising out of Flight Engineers' Retirement Plan.

(vi) Grievances arising out of the retroactive pay provisions in the instant Flight Engineer agreement.

(vii) Grievances arising out of the longevity and accredited service credits of presently furloughed flight engineers.

(viii) Grievances arising out of disciplinary, discharge and dismissal disputes.

(ix) Pending grievances based on the flight engineer agreement in effect on December 10, 1964.

(b) All other flight engineer grievances at the system board level shall be processed as follows:

(i) The President of the Flight Engineers Chapter shall submit the grievance to the President of the Allied Pilots Association.

(ii) The President of the Allied Pilots Association shall within 30 days submit such grievance to the Pilots System Board of Adjustment.

(iii) In the event that the President of the Allied Pilots Association fails to so submit the grievance, the President of the Flight Engineers Chapter may submit the grievance to the Flight Engineers System Board of Adjustment.

(iv) Should the flight engineer's grievance be denied by a 4-man Pilot board, the grievant may file a complaint with the President of the Flight Engineers Chapter alleging discrimination by the Board against him as a Flight Engineer.

(v) Should the flight engineer's grievance be denied before a 5-man board with the neutral voting to deny the grievance, the decision of the 5-man board shall be final and binding and shall not be subject to any charge of discrimination.

(c) Should the flight engineer's grievance be denied by a 5-man Pilot board with the neutral voting to sustain the grievance and one or more of the pilot members re-

versing his previous vote on the 4-man board, then the flight engineer may file a complaint with the President of the Flight Engineers Chapter alleging discrimination against him as a flight engineer.

(d) No complaint of discrimination shall be considered unless (i) it is in writing signed by the grievant and (ii) it sets forth the basis of the alleged discrimination.

(e) Where such written complaint has been filed, the President of the Flight Engineers Chapter may in his discretion file such complaint with a 7-man System Board of Adjustment, which shall consist of two flight engineer representatives, two pilot representatives, two Company representatives, and a neutral.

(f) The 7-man board shall first consider the charge that the grievant was discriminated against because he was a flight engineer, and if this charge is sustained by a majority vote of the 7-man board, the same board shall then decide the grievance on its merits by majority vote. If the charge is not sustained the decision of the 5-man Pilot board shall be final and binding.

(g) The Company shall pay for the flight pay loss of Pilot and Flight Engineer members of the 7-man System Board, the cost of the neutral, and the cost of the transcript in such proceedings.

Appendix D Annexed to Agreement

The Flight Engineers Chapter recognizes its obligation to pay the Allied Pilots Association for services rendered. The Allied Pilots Association shall forward to the President of the Flight Engineers Chapter, not oftener than once a year, a statement of what it considers to be a reasonable charge for services rendered.

(a) The President of the Flight Engineers Chapter and the President of the Allied Pilots Association shall make a good faith effort to arrive at an amicable agreement on the amount to be paid by the flight engineers to the Allied Pilots Association.

(b) In the event that the respective Presidents fail to agree on the amount to be paid, the following issue will be submitted to an arbitrator:

"What amount of money shall be paid to the Allied Pilots Association by the FEIA for services rendered?"

(c) In determining the proper and just amount, the arbitrator shall take into consideration the membership of the APA and the FEIA, the cost of negotiations to the APA, the cost of administrative and related services performed by the APA during the term of an agreement, the positions and arguments of the parties with respect thereto, and such other factors as the arbitrator may consider to be relevant. The arbitrator shall also determine the effective date for the payment of the allocated amount issuing out of his award.

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IN THE

Supreme Court of the United States

October Term, 1964

No. 455

AMERICAN AIRLINES, INC.,

Petitioner,

v.

JOSEPH V. MANNING, as President of the American Airlines Chapter, Flight Engineers' International Association AFL-CIO, and AMERICAN AIRLINES CHAPTER, FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, AFL-CIO, an unincorporated association,

Respondents.

MEMORANDUM OF PETITIONER SUGGESTING THAT THE CASE IS MOOT

ARTHUR M. WISEHART
Attorney for Petitioner
633 Third Avenue
New York, New York 10017
212 TN 7-1234

GEORGE A. SPATER
Of Counsel

IN THE

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AMERICAN AIRLINES, INC.,

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JOSEPH V. MANNING, as President of the American Airlines Chapter, Flight Engineers' International Association AFL-CIO, and AMERICAN AIRLINES CHAPTER, FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, AFL-CIO, an unincorporated association,

Respondents.

MEMORANDUM OF PETITIONER SUGGESTING THAT THE CASE IS MOOT

This memorandum is filed to advise the Court of developments occurring after the granting of the petition for certiorari herein which, in petitioner's view, render this case moot.*

* A similar position is being taken also by petitioners in *O'Connell, etc., et al.* v. *Manning, etc., et al.*, No. 454, Oct. Term 1964, and a Supplemental Joint Appendix therefore is being filed in both cases concurrently. Attention is invited to the motion submitted by petitioners in the *O'Connell* case. We understand that the motion refers to factual matters which, for brevity, are not repeated herein.

On March 12, 1965, the parties entered into collective bargaining agreements disposing of all issues in dispute.* Of particular significance from the standpoint of this case is the "Tripartite Agreement" set forth in the Supplemental Joint Appendix, which contains detailed provisions prescribing the representation and bargaining relationships of the parties in the future. Also set forth in the Supplemental Joint Appendix is a letter signed by the Secretary of Labor and the Chairman of the National Mediation Board, which includes the following statement:

> "Those provisions of the said Tripartite Agreement relating to bargaining and the performance of the representation function terminated a long-standing dispute of substantial impact on the airline industry and the public in a manner considered equitable, reasonable, and in full consideration of the respective contentions of the respective parties."

It is not anticipated that respondents will take issue with the position that the litigation is moot. The incidents involved in the litigation occurred approximately two years ago, and the labor dispute has been resolved in its entirety by the settlement referred to above.** Thus, a case or controversy no longer exists.

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* The agreements are effective as of December 11, 1965.

** The questions set forth in the petition for certiorari are as follows (pp. 2-3):

> "1. '* * * whether the Railway Labor Act prohibits an employer who faces the demands of two employee groups that call for a joint solution from insisting that the negotiations be held simultaneously in one room and across one table, and requires him instead to negotiate across two tables in two separate rooms, running back and forth from one to the other.'*
>
> "2. Does the National Mediation Board have exclusive or primary jurisdiction over the question of whether an employer

In view of this situation, it is our understanding of *United States* v. *Munsingwear*, 340 U. S. 36 (1950), that application should be made to reverse or vacate the decision below and to remand with a direction to dismiss. The Court's opinion in the *Munsingwear* case contains the following statement (340 U. S. at 39-40):

> "The established practice of the Court in dealing with a civil case from a court in the federal system which has become moot while on its way here or pending our decision on the merits is to reverse or vacate the judgment below and remand with a direction to dismiss. That was said in Duke Power Co. v. Greenwood County, 299 U. S. 259, 267, to be 'the duty of the appellate court.' That procedure clears the path for future relitigation of the issues between the parties and eliminates a judgment, review of which was prevented through happenstance. When that procedure is followed, the rights of all parties are preserved; none is prejudiced by a decision which in the statutory scheme was only preliminary." (Footnote omitted.)

See also *Brotherhood of Railroad Trainmen* v. *Chicago & Illinois R.*, 375 U. S. 18 (1963); *Publishers' Association of New York City* v. *New York Mailers' Union Number 6*, 376 U. S. 775 (1964).

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has bargained properly, when the bargaining is being conducted under the Board's auspices?'

"3. Are the requirements of the Norris-LaGuardia Act applicable in an injunction suit by a union against an employer covered by the Railway Labor Act?"

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* From the dissenting opinion in the instant case by Hon. Henry J. Friendly, U. S. C. J., 329 F. 2d at 23-24 (Jt. App. 25).

Conclusion

The judgment should be vacated and the case remanded to the United States District Court for the Southern District of New York for dismissal because of mootness.

Dated: New York, New York
April 2, 1965

Respectfully submitted,

ARTHUR M. WISEHART
Attorney for Petitioner
633 Third Avenue
New York, New York 10017
212 TN 7-1234

GEORGE A. SPATER
Of Counsel

Office-Supreme Court, U.S.
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APR 3 1965
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Supreme Court of the United States

October Term, 1964

No. 454

NICHOLAS J. O'CONNELL, JR., individually and as Chairman of the Master Executive Council of the pilots in the service of AMERICAN AIRLINES, INC., and the Negotiating Committee of said pilots, consisting of RICHARD LYONS, ROBERT T. GUBA, JOSEPH GARVEY, PAUL ATKINS and NICHOLAS J. O'CONNELL, JR., ex officio,

Petitioners,

against

JOSEPH V. MANNING, as President of the AMERICAN AIRLINES CHAPTER, FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, AFL-CIO, and AMERICAN AIRLINES CHAPTER, FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, AFL-CIO, an unincorporated association,

Respondents.

MOTION FOR REVERSAL ON THE GROUNDS OF MOOTNESS

MARTIN C. SEHAM, Esq.
Attorney for Petitioners
Nicholas J. O'Connell, Jr., et al.
205 West 34th Street
New York, New York 10001
(212) LO 5-4424

Supreme Court of the United States

October Term, 1964

No. 454

NICHOLAS J. O'CONNELL, JR., individually and as Chairman of the Master Executive Council of the pilots in the service of AMERICAN AIRLINES, INC., and the Negotiating Committee of said pilots, consisting of RICHARD LYONS, ROBERT T. GUBA, JOSEPH GARVEY, PAUL ATKINS and NICHOLAS J. O'CONNELL, JR., ex officio,

Petitioners,

against

JOSEPH V. MANNING, as President of the AMERICAN AIRLINES CHAPTER, FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, AFL-CIO, and AMERICAN AIRLINES CHAPTER, FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, AFL-CIO, an unincorporated association,

Respondents.

MOTION FOR REVERSAL ON THE GROUNDS OF MOOTNESS

Motion is hereby made, in accordance with the rules of this Court, for an order reversing or vacating the decision of the courts below on the grounds of mootness and remanding the case with a direction to dismiss the orders heretofore entered.

Developments Since the Petition for Certiorari

As the Court knows, this case, as well as the related case of *American Airlines, Inc.* v. *Manning,* Dkt. No. 455, both arise from long-standing disputes as to the crew complement composition of airline cockpits. More particularly, they have arisen from the various contentions by pilots, flight engineers, their representatives, and the carrier, as to the qualifications necessary for the man serving in the "third seat" in the airliner cockpit. Incidental to that determination, there has also been the question of the identity of the union bargaining representative for such crew member.

The instant case arose out of a complaint by the respondent that the petitioner/defendant was improperly bargaining or attempting to bargain for the American Airline flight engineer group and otherwise improperly interfering with those employees' choice of their bargaining representative. This complaint resulted in the entry of a preliminary injunction against the American Airline pilot group (now represented by the Allied Pilots Association and hereinafter referred to as "Allied"), which prohibited them from what we consider many of the legitimate activities granted by federal law to labor organizations. This decision was affirmed by a divided court in the second circuit and a petition for review in this Court was subsequently filed and granted. Since the submission of our petition and subsequent to its grant, all of the parties have been actively involved in the collective bargaining process in order to achieve a negotiated and final resolution of their

differences. The culmination of these efforts took place on March 12, 1965 when all three parties signed a so-called Tripartite Agreement to be effective as of December 11, 1964. The full text of the Tripartite Agreement is being made available to the Court with this motion.* However, for the Court's convenience, we will refer specifically to a few aspects of that Agreement which demonstrate the mootness of the instant proceeding.

The Tripartite Agreement, in effect, guarantees the rights of present flight engineers to occupy the "third seat" in the cockpit and to enjoy continued representation by the AAL Chapter FEIA. However, the agreement also provides (¶3) that "All cockpit crew members hired by the Company on or after July 1, 1964, shall meet the Company's employment requirements for the hiring of pilots, and shall be represented by the Allied Pilots Association * * *" and covered by the pilot collective bargaining agreement. With certain limited exceptions (¶9), the Agreement also provides that flight engineers will in the future be automatically entitled to the changes in rules and working conditions negotiated in the pilots' collective bargaining agreements. In recognition of the bargaining services rendered to the flight engineers and the FEIA Chapter, Appendix D of the Agreement provides for monetary payment by the Chapter for such services.

Subject to the provisions already commented upon for the diminishing scope of the flight engineer bargaining unit.

* Since the Tripartite Agreement is relevant to the motions being made both by these petitioners and by American Airlines, it has been printed as a Supplemental Joint Appendix to both motions in order to minimize the cost of printing to the parties.

the Agreement in ¶1 and ¶2 contractually recognizes the bargaining rights of the two unions. Paragraph 8 of the Agreement establishes, pursuant to Section 204 of the Railway Labor Act, a Tripartite Board of Adjustment with reference, if necessary, to a neutral referee for the settlement of "any dispute, claim or grievance arising out of or relating to the interpretation or application" of the Agreement; such disputes would include any question arising under Paragraphs 1 and 2 or any other provision dealing with the representation rights of the two unions.

Paragraph 12(b) of the Agreement contains a broad provision declaring that the Agreement is a permanent resolution of the parties' differences, and committing the signatories to refrain from initiating any proceeding to question the Agreement and requiring them to participate in the defense of any proceeding that could conceivably be brought by a third party.

It has been the understanding of the parties throughout their negotiations on the Tripartite Agreement that a successful resolution of their differences would necessarily require the termination of all litigation arising out of those controversies. A preliminary agreement stating that "all pending court proceedings between the parties would be discontinued without costs" was initialed on October 17, 1964. Counsel for the various parties have endeavored to implement the objectives of the parties by agreement upon some form of stipulation. There is no need to involve the Court in the pros and cons of the various formulations advanced on a "no prejudice" basis; suffice it to say, the parties have not found it possible to agree on a single satisfactory form. In the absence of some such agreement,

we felt it our obligation, as petitioners, to advise the Court of these developments which have rendered moot the controversy between the parties concerning representation rights. Consequently, in accordance with the Rules and previous decisions of this Court, we have made the instant motion.

POINT I

Under the doctrine of *U. S.* v. *Munsingwear*, the instant procedure is the correct means of disposition.

This Court has, in the past, commented upon the correct procedure for disposing of a case which has become moot while pending decision. In *United States* v. *Munsingwear, Inc.*, 340 U. S. 36, 39 (1950), this Court said:

> "The established practice of the Court in dealing with a civil case from a court in the federal system which has become moot while on its way here or pending our decision on the merits is to reverse or vacate the judgment below and remand with a direction to dismiss." [Citations in footnote omitted.]

In the *Munsingwear* case, which arose under the antitrust laws, there was an earlier decision dismissing an action for an injunction; that decision had been left standing. As the Court explained [340 U. S. at 40]:

> "In this case the United States made no motion to vacate the judgment. It acquiesced in the dismissal. It did not avail itself of the remedy it had to preserve its rights. Denial of a motion to vacate could bring the case here. Our supervisory power over the judgments of the lower federal courts is a broad one. See

28 U. S. C. §2106, 28 U. S. C. A. §2106, 62 Stat. 963; United States v. Hamburg-Amerikanische Packet-Fahrt-Actien Gesellschaft, 239 U. S. 466, 478, 36 S. Ct. 212, 217, 60 L. Ed. 387; Walling v. James V. Reuter, Inc., 321 U. S. 671, 676-677, 64 S. Ct. 826, 828, 829, 88 L. Ed. 1001. As already indicated, it is commonly utilized in precisely this situation to prevent a judgment, unreviewable because of mootness, from spawning any legal consequences. The case is therefore one where the United States, having slept on its rights, now asks us to do what by orderly procedure it could have done for itself. The case illustrates not the hardship of *res judicata* but the need for it in providing terminal points for litigation."

Thus, this Court held that the Government was bound in a treble damages suit arising out of the same circumstances by the *res judicata* effect of the earlier dismissal of the action for an injunction. In commenting upon the procedure we are now adopting and which the Government in the *Munsingwear* case *should have* followed, this Court commented [340 U. S. at 40]:

"When that procedure is followed, the rights of all parties are preserved; none is prejudiced by a decision which in the statutory scheme was only preliminary."

Similarly, the instant case is one involving only a preliminary injunction which by definition is a tentative and interim determination which should not be left standing to plague the future relations of the parties.

We emphatically believe that the issues we have presented to this Court on our petition for certiorari are important ones affecting the administration of justice in the Federal courts and, in particular, the application of the Norris-LaGuardia Act to labor organizations. We maintain the view that the implications of the decisions below

go far beyond the interests of the parties in the instant matter. Moreover, we are quite troubled by the fact that the issues arising from the injunction against the pilot organization were never adequately treated in any of the opinions by the lower courts. We believe those decisions were wrong, and it is with great reluctance that we contemplate the fact that they will not be resolved at an early date by this Court. However, in view of the Tripartite Agreement reached by the parties, which has been presented to this Court, we must in candor advise the Court that the dispute concerning the representation of the cockpit crew employees of American Airlines has become moot. Both from the point of view of the petitioners herein (who must avoid the pitfalls explained in the *Munsingwear* case) and in the interest of diminishing the effect of a doubtful precedent in the dynamic area of labor relations and labor law, we respectfully submit that the Court should reverse or vacate the judgment below and remand with a direction to dismiss, without costs to either party.

Conclusion

For the foregoing reasons, it is respectfully submitted that the petitioners' motion be granted, without costs to either party.

April, 1965

Respectfully submitted,

MARTIN C. SEHAM, Esq.
Attorney for Petitioners
Nicholas J. O'Connell, Jr., et al.
205 West 34th Street
New York, New York 10001
(212) LO 5-4424

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 454

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Petitioners,
v.
JOSEPH V. MANNING, *etc., et al.,*
Respondents.

No. 455

AMERICAN AIRLINES, INC.,
Petitioner,
v.
JOSEPH V. MANNING, *etc., et al.,*
Respondents.

MEMORANDUM AND APPENDIX IN OPPOSITION TO MOTIONS BASED UPON MOOTNESS

ASHER W. SCHWARTZ,
501 Fifth Avenue,
New York, New York 10017,
Attorney for Respondents,
212 MU 2-1261.

WALTER N. KAUFMAN,
Of Counsel.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 454

NICHOLAS J. O'CONNELL, JR., *etc., et al.*,

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AMERICAN AIRLINES, INC.,

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v.

JOSEPH V. MANNING, *etc., et al.*,

Respondents.

MEMORANDUM IN OPPOSITION TO MOTIONS BASED UPON MOOTNESS

This memorandum "in opposition" is not intended to oppose the dismissal of these proceedings for mootness, but only to oppose dismissal in the manner requested by petitioners.

The suggested mootness has not come about through an extraneous event or the unilateral action of any of the parties, but solely by reason of a settlement entered into by all of the parties.* In moving to dismiss, petitioners rely upon that settlement, but have not fairly apprised the Court of the settlement provisions directly affecting the dismissal of pending litigation. In this memorandum, respondents would adequately acquaint the Court with those provisions and respectfully request the Court to dismiss these proceedings for mootness in the light of that settlement.

On October 17, 1964, petitioner American ("Company") and respondents ("Engineers") reached and initialed a "tentative agreement" resolving their long-standing labor dispute (App. 1a**). That agreement incorporated a "tripartite agreement," which petitioners cite in support of the suggestion of mootness (Supp. Jt. App. 2, *ff.*). On October 17th the "tripartite agreement" had yet to be signed by the third party, petitioners O'Connell *et al.* ("Pilots"); hence, the "tentative" over-all agreement between the Company and the Engineers.

Nonetheless, the Company announced to the public on October 18th that it had settled with the Engineers; and the letter signed on March 8, and 10, 1965, by the Secretary

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* In the District Court, petitioners unsuccessfully suggested mootness based upon their unilateral "declarations" and "assurances" to respondents. The District Court rejected the suggestion, largely on the authority of *United States* v. *W. T. Grant Co.*, 345 U. S. 629 (1953). (227 F. Supp. 697-698)

** "App." references are to the Appendix annexed hereto. "Supp. Jt. App." references are to the Supplemental Joint Appendix submitted in support of petitioners' motions.

of Labor and the Chairman of the National Mediation Board, cited to the Court by petitioners, refers to the "terms and provisions of the Tripartite Agreement dated October 17, 1964" (Supp. Jt. App. 1-2).

Part and parcel of the October 17th agreement was the further provision: "All pending court proceedings between the parties to be discontinued without costs." The "pending court proceedings" are (1) the proceedings in this Court to review affirmance of the District Court's issuance of a preliminary injunction against the Company and Pilots in the "bargaining case," (2) the Engineers' petition in the District Court for a permanent injunction in this "bargaining case," and (3) the Engineers' petition in the District Court for a permanent injunction in a companion case, the "dues check-off case."*

In the Pilots' motion, the provision of the October 17th agreement for discontinuance of pending court proceedings is characterized as merely "preliminary" (p. 4), but on October 17th that aspect of the settlement was no more preliminary or tentative than the "tripartite agreement."

On December 11, 1964, the Company, the Engineers *and* the Pilots reached agreement, expressly affirming certain prior agreements, including the "Memorandum of Tentative Agreement between American and the FEIA as initialed by Asher W. Schwartz and A. DiPasquale on October

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* Earlier this term, this Court denied review of the affirmance of the District Court's issuance of a preliminary injunction against the Company in the "dues check-off case." *Manning* v. *American Airlines, Inc.*, 221 F. Supp. 301 (S. D. N. Y. 1963), *aff'd*, 329 F. 2d 32 (2d Cir.), *cert. denied*, 379 U. S. 817 (1964). In the "dues check-off case," a temporary restraining order against the Engineers, extended by stipulation, is also outstanding.

17, 1964, which memorandum includes as its Exhibit B a Tripartite Agreement" (App. 2a).

The December 11th agreement, by its terms, became "effective immediately," subject to termination if it failed of ratification by the Pilot and Engineer groups. On December 15th, the Pilots' counsel requested of the Chief Deputy Clerk of this Court that further action in printing the record be deferred pending probable ratification of the agreement, since "one of the provisions of this agreement requires the termination of all litigation among the parties" (App. 4a). The agreement was ratified in due course, and counsel for the Company so notified the Chief Deputy Clerk, stating that "subject to completion of some necessary paper work, it is anticipated that a stipulation for dismissal pursuant to Rule 60 will be submitted in about six weeks" (App. 5a). The paper work was completed March 12, 1965.

Counsel for the parties, however, have been unable to agree on the terms of a stipulation for dismissal, to be filed in each of the pending cases. Counsel for the Company has insisted upon a speaking stipulation (App. 6a-7a), which was acceptable to counsel for the Pilots. Although the Engineers' counsel had assumed that a stipulation in the customary form would be filed (App. 9a), he was willing to sign Company counsel's stipulation except for paragraph 2, which provides in part that "no aspect" of any of the pending cases, "or any determinations therein, shall be regarded as evidence that the parties, or any of them, have violated any requirements of law." Suggested revisions of paragraph 2 by counsel for the Engineers and for the Pilots have not proved mutually acceptable (App. 8a).

Both the Company's and Pilots'. counsel have refused to sign the alternative stipulation, in the customary form, submitted by the Engineers' counsel (App. 9a).

It is altogether apparent that the stipulations proposed by the Company's and Pilots' counsel, especially paragraph 2 thereof, go beyond the agreement of the parties to "discontinue" court proceedings. However, all counsel agree that in the "bargaining case"—the only case before this Court—"all outstanding orders . . . be vacated and all appeals and pending requests for relief . . . be dismissed, with prejudice and without costs to any party," as stated in paragraph 1 (a) of Company counsel's proposed stipulation (App. 6a). This Court will effectuate that agreement, as well as the settlement agreement, if it dismisses these proceedings and remits the case to the District Court with instructions to dismiss on the ground of mootness.

No litigation is pending in the Court of Appeals to be "discontinued"; and there is no "outstanding order" of the Court of Appeals to be "vacated." There is only a judgment affirming the District Court, without any directions whatever. That judgment has not become unreviewable by this Court through "happenstance," as had occurred in *United States* v. *Munsingwear, Inc.*, 340 U. S. 36, 40 (1950), relied upon by petitioners. There, while an appeal was pending, the price regulation allegedly violated was rendered inapplicable by administrative action.

In any event, there is no occasion for this Court to *reverse* the judgment of the Court of Appeals, as the Pilots request, but not the Company. There is an obvious likelihood that such reversal woud be taken as a vindication of

petitioners on the merits. Petitioners should not be permitted to accomplish by motion what their counsel were unable to accomplish by stipulation.

Apparently this Court has reversed in moot case where the judgment of the Court of Appeals was coupled with directions to the District Court, on the theory, expressed in *Brownlow* v. *Schwartz*, 261 U. S. 216, 218 (1923), that but for such reversal, such orders would be left "in force, —at least apparently so." However, does not vacating the judgment serve the same purpose? Furthermore, it would seem as inappropriate to reverse as it would to affirm, as this Court also observed in *Brownlow* v. *Schwartz*, *supra* at 217: "One would be as vain as the other."

In a case decided not long after *Brownlow* v. *Schwartz*, the judgment of the Court of Appeals was vacated, not reversed, on the ground of mootness, even though this Court there held, citing *Brownlow* v. *Schwartz*, that the Court of Appeals had *erred*—that the *Court of Appeals* "should have remanded the cause with directions to dismiss the petition as moot." *United States* ex rel. *Norwegian Nitrogen Products Co.* v. *United States Tariff Comm'n*, 274 U. S. 106, 112 (1927). As the citations concluding the Company's memorandum reflect (p. 3), the current practice of this Court in moot cases is to vacate rather than reverse judgments of the Courts of Appeals.

However, this Court has also dismissed moot cases without disposing of any of the proceedings below, as in *Schenley Distilling Corp.* v. *Anderson*, 333 U. S. 878 (1948) (mem.): "The parties being in agreement that the cause is moot, the motion to dismiss is granted and the appeal is

dismissed." See also *Pan American Airways Corp.* v. *W. R. Grace & Co.*, 332 U. S. 827 (1947) (mem.). Dismissal in that form would carry out the settlement of the parties in this case—to "discontinue" these proceedings. The agreement among the parties must surely outweigh the disagreement among their counsel.

Moreover, had counsel filed a stipulation for dismissal pursuant to Rule 60 of the Rules of this Court, as they contemplated (App. 5a), the judgment of the Court of Appeals would not have been vacated, let alone reversed. The concern expressed in the Pilots' motion lest the preliminary injunction of the District Court be "left standing to plague the future relations of the parties" (p. 6) is wholly unwarranted, for, as already noted, the parties are agreed that all outstanding orders are to be vacated.

This Court's "supervisory power over the judgments of the lower federal courts is a broad one." *United States* v. *Munsingwear, Inc., supra* at 340 U. S. 40. "If a judgment has become moot, this Court may not consider its merits, but may make such disposition of the whole case as justice may require." *Walling* v. *James V. Reuter, Inc.*, 321 U. S. 671, 677 (1944). In framing its orders in moot cases, this Court may consider "the nature and character of the conditions which have caused the case to become moot." *United States* v. *Hamburg-Amerikanische Packetfahrt-Actien Gesellschaft*, 239 U. S. 466, 478 (1916); *Heitmuller* v. *Stokes*, 256 U. S. 359, 362 (1921).

For the foregoing reasons, respondents respectfully request that the Court, in dismissing these proceedings on the ground of mootness, do so consistently with the parties' settlement which has caused the mootness.

CONCLUSION

These proceedings should be dismissed without costs to any of the parties, and the case remanded to the United States District Court for the Southern District of New York for dismissal because of mootness.

Dated: New York, New York,
April 21, 1965.

Respectfully submitted,

ASHER W. SCHWARTZ,
Attorney for Respondents.

WALTER N. KAUFMAN,
Of Counsel.

APPENDIX

Memorandum of Tentative Agreement

/s/ AWS*
/s/ ADP**

October 17, 1964 New York, New York

MEMORANDUM OF TENTATIVE AGREEMENT

1. . . .

2. Tripartite Agreement as annexed (Ex. B) with following modifications:

. . .

8. All pending court proceedings between the parties to be discontinued without costs.

9. The Tripartite Agreement to be filed in U. S. District Court as part of record of settlement.

. . .

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* Asher W. Schwartz, Engineers' counsel.

** A. DiPasquale, Company's assistant vice president—labor relations.

Agreement of December 11, 1964

American Airlines, Inc. (American) and the American Airlines Chapter, Flight Engineers International Association (FEIA) and the pilots in the employ of American Airlines as represented by the Allied Pilots Association (Pilots) hereby agree:

1. The following prior agreements are hereby affirmed:

(a) The Memorandum of Tentative Agreement between American and the FEIA as initialed by Asher W. Schwartz and A. Di Pasquale on October 17, 1964, which memorandum includes as its Exhibit B a Tripartite Agreement.

. . .

2. [Same as "Appendix C annexed to Agreement" (Supp. Jt. App. 13-15)]

3. [Same as "Appendix D annexed to Agreement" (Supp. Jt. App. 16)]

. . .

6. This agreement becomes effective immediately, but if it fails to be ratified as set forth above, the agreement will thereupon terminate and be without any further force and effect.

Agreement of December 11, 1964

Signed at New York, New York, this 11th day of December, 1964.

/s/ JOSEPH V. MANNING
For the AAL Chapter,
Flight Engineers
International Association

/s/ J. R. LYONS
For the Allied
Pilots Association
/s/ RALPH L. HARKENRIDER

/s/ J. O. JARRARD
For American Airlines, Inc.

Witnesses: [Omitted]

Letter from Pilots' Counsel to Chief Deputy Clerk

December 15, 1964

Hon. Edmund P. Cullinan
Chief Deputy Clerk
United States Supreme Court
Washington 25, D. C.

Dear Mr. Cullinan:

Mr. Wisehart's letter of December 14, 1964, accurately reflects the status of *O'Connell* v. *Manning*, No. 454, as well as No. 455, *American Airlines* v. *Manning*.

The Board of Directors of the pilot group will be meeting shortly to ratify an agreement among the various parties. Since, as Mr. Wisehart points out, one of the provisions of this agreement requires the termination of all litigation among the parties, I have been instructed to make every effort to limit any unnecessary Court costs. Therefore, while it is possible that the litigation may be continued, I would nonetheless respectfully request that you and the Court defer any further action in printing or preparing the record. I understand that it would be an imposition to make this request for more than a limited period of time, and we will inform you immediately of all further developments in this matter.

Sincerely,

MARTIN C. SEHAM

cc: ARTZ, Esq.
SHAW, Esq.

Letter from Company's Counsel to Chief Deputy Clerk

January 6, 1965

Hon. Edmund P. Cullinan
Chief Deputy Clerk
United States Supreme Court
Washington 25, D. C.

Re: American Airlines, Inc. v. Manning, No. 455

Dear Mr. Cullinan:

Confirming our conversation today, this is to advise that the settlement between the parties in the above entitled matter has been ratified by the employees concerned. Therefore, subject to completion of some necessary paper work, it is anticipated that a stipulation for dismissal pursuant to Rule 60 will be submitted within about six weeks. This no doubt will also apply to No. 454, although we are not parties in that case.

Sincerely,

ARTHUR M. WISEHART
Attorney for American Airlines, Inc.

cc: ALBERT W. SCHWARTZ, ESQ.
MARTIN C. SEHAM, ESQ.

Stipulation for Dismissal Proposed by Company's Counsel

This stipulation, entered into by and between counsel for the parties this day of December, 1964.

WITNESSETH:

WHEREAS, the parties have entered into a Tripartite Agreement dated as of December 11, 1964, with the assistance of the National Mediation Board, and

WHEREAS, the Tripartite Agreement constitutes a permanent settlement of the Crew Complement Dispute on American Airlines, Inc., and

WHEREAS, it is anticipated that this settlement will inaugurate a new and harmonious era in the relationships of the parties, and

WHEREAS, the continuation of adversary proceedings is both unneeded and undesirable in these circumstances,

NOW, THEREFORE, it is stipulated and agreed that:

1. Pending litigation will be disposed of as set forth below;

(a) In the Flight Engineer Bargaining Case, all outstanding orders will be vacated and all appeals and pending requests for relief will be dismissed, with prejudice and without costs to any party. (The Flight Engineer Bargaining Case is *Ruby* v. *American Airlines, Inc.*, 63 Civ. 585, 227 F. Supp. 674 (S. D. N. Y. 1963), 329 F. 2d 11 (2 Cir. 1964),

certiorari granted, — U. S. —, 33 U. S. L. W. 3179, Nos. 454, 455 (1964).)

(b) In the Dues Check-Off Case, all outstanding orders will be vacated and the case dismissed with prejudice and without costs to any party. (The Dues Check-Off Case is *Manning* v. *American Airlines, Inc.*, 63 Civ. 1187, 221 F. Supp. 301 (S. D. N. Y. 1963), 329 F. 2d 32 (2 Cir. 1964), certiorari denied, — U. S. —, 85 S. Ct. 33, No. 79 (1964).)

2. The foregoing cases did not result in final judgment, and have been superseded by collective bargaining. Accordingly, no aspect thereof, or any determinations therein, shall be regarded as evidence that the parties, or any of them, have violated any requirements of law.

3. The Petition for Leave to Intervene in Case No. C-3351, before the National Mediation Board, will be withdrawn by American Airlines, Inc.

IN WITNESS WHEREOF, counsel for all parties have set forth their signatures below as of the date first above written.

Counsel for American Airlines, Inc.

Counsel for AAL Chapter, Flight Engineers International Association

Counsel for Allied Pilots Association

Revision Suggested by Engineers' Counsel of Paragraph 2 of Company Counsel's Proposed Stipulation

2. The parties have resolved the issues between them through collective bargaining, and they, or any of them, will not initiate any independent action or proceeding in any Court or before any administrative body based upon any of the determinations in the foregoing cases.

Revision Suggested by Pilots' Counsel of Paragraph 2 of Company Counsel's Proposed Stipulation

2. The issues between the parties have been finally resolved through collective bargaining and the termination of the litigation hereinbefore described and they agree that none of them will initiate or participate in any action or proceeding before any Court, Agency, Board, or other forum whether governmentally or contractually established upon the basis of any of the determinations in the foregoing cases or upon the basis of the events and transactions from which such cases arose.

Alternative Stipulation for Dismissal Proposed by Engineers' Counsel*

IT IS HEREBY STIPULATED that the above-entitled action may be dismissed with prejudice, each party to bear his own costs.

Dated: New York, New York
March ; 1965

.....
Attorney for American Airlines, Inc.

.....
Attorney for AAL Chapter, Flight Engineers' International Association

.....
Attorney for Allied Pilots Association

* See Moore's Manual. *Federal Practice Forms*, No. 19-3, p. 19-5 (1964).